



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 197 OF 2009

SAMSON ADUOR OKEYO APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the judgment of the Senior Resident Magistrate Sd. W N Kaberia SRM delivered on 5/06/2009 in Kajiado Criminal Case No. 797 of 2008)

J U D G M E N T

The Appellant was charged in the subordinate court with the offence of stealing stock contrary to Section 278 of the Penal Code. The particulars of charge were that on 7th July 2008 at Langata Nkima area of Loitokitok in Kajiado District within Rift Valley Province he stole thirteen (13) goats valued at KShs.26.000/= the property of Jeremia Sitelo.

After trial he was convicted of the offence and sentenced to serve six (6) years imprisonment. Being aggrieved by decision of the trial court he has appealed to this court against both conviction and sentence.

In his submissions in support of his appeal, the Appellant stated that a neighbour sold him the goats in exchange for his (Appellant's) two cows. Then the neighbour disappeared and he had not seen him again.

Learned State Counsel Mr Mwenda opposed the appeal. Counsel emphasized that the Appellant was seen with the goats at Entarara, market. In defence at the trial he said he was hired to take the goats. Counsel stated further that the sentence was lawful.

I have evaluated the evidence on record, as this is a first appeal. The Appellant was not seen stealing the goats. PW3 JEREMIA SITETU, the owner of the goats stated in evidence that on 7/7/2008 he left 34 goats grazing in the field and went to take medicine. He came back to find 13 goats missing. The goats were found in the hands of the Appellant the same day at Entarara market, who was trying to sell them. PW1 MEPUKORI OLE KORARU and PW2 APC COSMAS NZIOKA confirmed that the Appellant was arrested trying to sell the goats. The Appellant confirms that the goats were found in his

possession and that he was selling them.

In his defence, which was sworn, he stated that he was hired at Kshs.400/= by one PAUL to drive the goats to Entarara market. He stated that they went to the market together and at the market, the said PAUL told him to sell the goats. That was when he was arrested. He stated that PAUL was a neighbour. He also stated that on an earlier occasion, Paul had exchanged two (2) heifers for 8 goats and asking him (Appellant) to drive the goats to Illasit.

I have perused the judgment of the learned magistrate. It has considered both the prosecution and defence case.

Having myself evaluated all the evidence on record, I find that the learned magistrate did not misdirect himself. The magistrate had the opportunity of seeing witnesses and determining their credibility. The Appellant was found with the goats the same day shortly after they went missing. He gives a story of PAUL whom he describes as a neighbour but states no more about that neighbour, such as where that neighbour lives and what that neighbour does or appears to do for a living, that would make the Appellant sell goats for him.

In my view, the doctrine of recent possession applies. The Applicant could either be the thief or handler of stolen property; since he was found with the goats shortly after they went missing. With the evidence tendered before the trial magistrate, I find that the Appellant was the actual thief - MATU –vs- REPUBLIC (2004) 1KLR 510 applied. I find that the prosecution proved its case beyond reasonable doubt. I find that the appeal has no merits. The defence of the Appellant was an attempt to divert attention and responsibility to a non-existent person called PAUL.

The sentence is lawful and I find no wrong exercise of discretion on the part of the trial court.

Consequently, I dismiss the appeal and uphold both the conviction and sentence.

Dated and delivered at Machakos this **13th** day of **December** 2011.

George Dulu

Judge

In presence of:-

Appellant in person: present

For State: Mrs Gakobo

Nyalo: Court clerk