

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 47 of 2009

MARKS KARIUKI KARATU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

On the wee hours of the morning (2.00 a.m.) of 17/4/08, Lawrence Murimi was asleep in his house. He heard some noise by the chicken house. He woke up and opened the door and peeped outside. He saw an intruder standing next to the chicken coop. On seeing him, the intruder took off. He nonetheless followed him and asked who it was and the intruder identified himself as Karis and said that he was just passing through the compound. The complainant raised an alarm and the intruder was arrested and taken to the police station where he was charged with the offence of attempting to steal chicken contrary to Section 275 as read with section 389 of the penal code. He was taken to court where he plea ded not guilty and the matter went to full trial. That intruder was the Appellant herein. He denied having attempted to steal the chicken and said he was just passing through the complainant's compound. According to the complainant however, his compound was properly fenced complete with a gate and there is no path or way through the compound for outsiders.

The learned trial magistrate found the case proved beyond reasonable doubt and convicted the Appellant. He imposed a fine of 20,000 sh. or 18 months imprisonment in default of the fine. Being aggrieved by the said conviction and sentence, he filed this Appeal. He proffered 6 home made grounds which I have considered but which I find unnecessary to replicate here for purposes of this judgment.

Learned counsel for the state supports both the conviction and the sentence. He submitted that the Appellant was arrested at the locus in quo. He was known by the complainant who was his neighbour and was therefore properly identified. He urged the court to dismiss this Appeal.

I have considered the grounds of appeal raised by the Appellant in this petition of Appeal along with the said submission. On ground 2 of the petition where the Appellant claims that he was detained in police custody for more than 24 hours before being taken to court, I note that that is not the correct position. The record shows that he was arrested on the early morning of 17th April 2008. He was presented to court on 18th April 2008. He was therefore taken to court within time and there was no violation of Section 72(3) of the constitution. That ground must therefore fail.

On the other general grounds raised, my finding is that the Appellant was found in the complainant's compound at 2.00 a.m. outside the chicken coop. There was no path nearby and he could not explain what he was doing outside the chicken coop at 2.00 a.m. He definitely had the intent to steal the chicken and could have done so had he not been spotted in time. My finding is that the conviction was not against the weight of the evidence adduced. The Appellant was indeed properly convicted. The sentence imposed was actually too lenient for one with a similar antecedent. I have no basis whatsoever to

interfere with the conviction and sentence herein. This Appeal is totally devoid of merit. The same is hereby dismissed. I uphold both conviction and sentence of the learned trial magistrate.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 23rd day of September 2010

In the presence of :- Appellant & Ms. Matiru for State.