

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 48 of 2009

MARKS KARIUKI KARATU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Marks Kariuki Karatu herein after referred to as the Appellant was charged before the Senior Resident Magistrate Baricho with the offence of attempted stealing contrary to Section 275 as read with Section 389 of the penal code. He pleaded not guilty to the charge. The prosecution called a total of 6 witnesses in support of its case. On his part, the Appellant testified on oath but called no witnesses. In brief the prosecution case was that the complainant was inside his house on the date in question at about midnight. He heard commotion outside at the rabbit cage nearby. He woke up and left the house and tip toed towards the rabbit cage. He saw an intruder who on seeing him ran away. PW1 found one piece of wood removed from the enclosure and a rabbit lying outside the cage. He screamed for help and other persons including some of the witnesses rushed to the scene. PW1 gave the neighbours the description of the person he had seen. They combed the nearby maize plantation and they caught the appellant hiding in a hole. They got hold of him and took him to the police station where he was charged. The Appellant denied having attempted to steal the rabbit and stated that he was just passing by when he was accosted by the members of public who he conceded were his neighbours and taken to the police station.

The learned trial magistrate found him guilty as charged and convicted him and sentenced him to pay a fine of 15,000/- in default 18 months imprisonment. Being aggrieved by that conviction and sentence, he filed this appeal. He has proffered 6 grounds of Appeal as per his petition of appeal. I would like to say however that from the evidence on record, the conviction against the Appellant was safe and properly grounded on the law and facts applicable. He was clearly seen and identified by the complainant who was actually his neighbour. He ran away but was found hiding in the nearby maize plantation. I would find no basis to interfere with the said conviction on the strength of that evidence.

Nonetheless, I note that in ground 2 of his petition of Appeal, the Appellant has raised the ground that he was detained in custody for over 24 hours. From the record of the trial court, he was actually arrested on 4th January 2008 but was taken to court on 10th January. - After a period of 6 days. This was a very petty offence. He was arrested at the locus in quo. He is even said to have been escorted to the police station along with the piece of timber he had removed from the rabbit cage. All the witnesses were from the neighbourhood and easily accessible. There was no reason whatsoever as to why the Appellant was detained for 6 days for a simple straight forward investigation.

I find that his constitutional rights as enshrined by section 72(3) of the constitution were violated. In the absence of any explanation from the state, I find the detention of 6 days inexcusable and unacceptable. The Appellant was held in custody in excess of the allowed time limit without any reasonable explanation. This therefore renders the proceedings against him a nullity. I therefore declare the same as such. The Appellant's Appeal therefore succeeds on that singular ground. I allow the

same and quash the conviction and sentence against him. I order that he be released from prison forthwith unless he is otherwise lawfully held.

W. KARANJA
JUDGE

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

In the presence of :- Appellant in person and Ms. Matiru for the state