

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 178 of 2007

CHRISTOPER MBOGO RICHARD.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant herein was tried and convicted by the Senior Resident Magistrate Runyenjes for the offence of Stealing Stock contrary to Section 278 of the Penal Code. He was sentenced to 3 years imprisonment. He was unhappy with the conviction and sentence and hence the filing of this appeal. He relies on 7 grounds of appeal which I will not replicate for purposes of this Judgment. The state counsel supports both the conviction and sentence.

In a nutshell, the evidence before the trial court was that the appellant went to his father's compound in broad daylight about 3.00 p.m. singing and saying he must eat a sheep that day. He untethered his father's two sheep as his father watched and drove them away. The father could not stop him as he feared being beaten by the appellant. The matter was reported to the authorities. The appellant slaughtered and feasted on one sheep and sold the other one to PW3. PW3 on learning that the sheep was stolen surrendered it to the police station. The other sheep was not recovered. The appellant was arrested and charged with the offence in question. In his 3 sentences defence, he denied having stolen the sheep and said that the charge was a frame up.

I have considered this evidence along with his grounds of Appeal and submission. I have also considered the learned state counsels submission. I agree with the state counsel that PW1 was an eye witness who saw the Appellant until and drive away the 2 sheep.

PW3 the buyer of one sheep said he had bought the same from the appellant for 1,000/=. Their evidence was corroborative and consistent. This in my view was an open and shut case. The appellant had no defence whatsoever and the learned trial magistrate rightly so held. The conviction was therefore based on sound evidence. The same cannot be disturbed. The sentence of 3 years imprisonment was infact too lenient and I have no reason to interfere with the same. My finding therefore is that this appeal lacks merit. The same is hereby dismissed in its entirety. The conviction and sentence is hereby upheld.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 11th day of June 2009.

In presence of:- Mr. Omwega for state

-Appellant had already served the sentence.