



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Criminal Appeal 152 of 2007

SANDO SWAGI MARWA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence of the Resident Magistrate's Court at Kehancha,

Criminal Case No.263 of 2006 by M. K. K. SEREM ESQ., RM)

JUDGMENT

The appellant was charged with stealing stock contrary to section 278 of Penal Code. He was convicted and sentenced to five years' imprisonment. He was aggrieved by the conviction and sentence and preferred an appeal to this court. In his petition of appeal he stated that there was no sufficient evidence to warrant his conviction. He further stated that the sentence that was passed was harsh and excessive.

During the hearing of the appeal, the appellant opted not make any oral submissions.

Mr. Kemo, Principal State Counsel, opposed the appeal. He submitted that there was overwhelming evidence that the appellant indeed committed the said offence.

This being the first appellate court, it is mandated to examine a fresh the evidence that was adduced before the trial court, re-evaluate the same reach its own conclusion, see OKENO VS REPUBLIC [1972] EA 32. The brief facts of the case are that on 29th January 2006, Joshua Ongele Siewe, PW1, the complainant herein, realized that his 16 head of cattle had been stolen from his cattle shade. He and his neighbours followed hoof marks, which led them to an area known as Ikerenge and then to Naoro. On 21st February 2006, PW1 accompanied by the area chief, John Okombo, PW4, and Police officers went to Ikerenge where he identified four of his stolen animals. They were in the home of the appellant.

Paskal Aiko, PW2, a nephew of PW1 was also in the search team and he corroborated the evidence of PW1, PW3 and PW4 also corroborated the evidence of the complainant.

In his defence, the appellant stated that between the 19th and 30th of January 2006, he had gone away from home to attend a burial of his sister. He further stated on the 22nd February 2006, the police and the

complainant went to his home but did not recover any stolen animal thereat. He was however arrested and locked up in police custody. Two other people were also arrested in connection with the theft of the cattle. On 23rd February 2006, they were ordered released on condition that they produced four head of cattle which they did. He claimed that the four head of cattle purportedly recovered from him were his animals.

The trial court considered the evidence of the prosecution witnesses as well as the defence of the appellant. The court found that there was sufficient evidence to prove that the four animals that were recovered from the appellant belonged to the complainant.

The appellant, having been found in possession of the animals that were stolen from the complainant and having failed to explain and having failed to give sufficient explanation as to how he came into possession of the same, that was sufficient prove that he was one of the people who stole the complainant's animals. His conviction was therefore proper. The sentence that was passed by the trial court cannot be said to be harsh or excessive. This appeal has no merit and I dismiss the same in its entirety.

DATED, SIGNED and DELIVERED at KISII this 23rd day of April, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

N/A for the appellant

Mr. Kemo, Principal State Counsel for the respondent

D. MUSINGA

JUDGE