



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 735 of 2006

ISSACK IBRAHIM IDOW.....APPELLANT

-AND-

REPUBLIC.....RESPONDENT

(An appeal from the Judgement of Senior Resident Magistrate

R.K. Mibei dated 9th October, 2005 in Criminal Case No.143 of 2006 at Mandera Law Courts)

JUDGEMENT

The appellant, together with another, had been charged with stealing stock contrary to s.278 of the Penal Code (Cap.63, Laws of Kenya). The particulars were that the two, on 7th April, 2006 at 2.00 a.m., at Lang Golf Location in El Wak Sub-District within the North Eastern Province, jointly stole nine camels valued at Kshs.90,000/=, the property of **Koriyow Derow Ahmed**. The two faced the alternative charge of handling stolen property contrary to s.322(1) of the Penal Code.

On the night of 7th April, 2006 the complainant lost through theft nine out of his 28 camels which had been kept in their shed. There was no eye-witness to the theft; and no foot-marks were found leading from the camel-shed.

PW1 received information that there was a camel tethered near El Wak town, and it was suspected to be one of the stolen ones. PW1 and PW2 went to the place where the said camel was tethered, and found the accused persons sitting nearby; and they claimed that this camel was theirs. Later, the two denied that the camel was theirs.

PW4, **Police Constable Edwin Kauntai** (the investigating officer) testified that the accused persons did not bring the one camel into El Wak centre, because they were waiting for a buyer to come along.

PW3, (the complainant) after being called by Police officers, identified the camel as his, by its cut left-ear lobe.

The learned Magistrate found that: *"The accused persons knew in their mind that the camel [was] not theirs...and that is why they were looking for [a] market to [sell] the said camel away from the members of the public who could have identified it."* As the accused persons merely denied guilt, the learned Magistrate held that the accused persons were guilty as charged.

On the occasion of hearing this appeal, the appellant brought with him "amended grounds of appeal," in which he contended, *inter alia*, as follows:

that he had no proper interpretation in Court, during the trial, and that this violated ss.77(2) (f) of the Constitution and 198(1) of the Criminal Procedure Code (Cap.75, Laws of Kenya);

that the trial Court had convicted on the basis of unreliable evidence;

that the trial Court erred in finding that the stolen camel was found in appellant's possession;

that witness evidence was uncorroborated;

that the defence evidence was not taken into account.

In his presentation, the appellant said he knew nothing about the offence; and he asked to be released.

Learned counsel **Mrs. Gakobo** submitted that it did not lie in the appellant's mouth to contest the availability of interpretation services during the trial: for the record shows that the Somali language had been used during trial – and it had been interpreted into Kiswahili. At one point in the proceedings, interpretation had been provided from Garre to Somali – and the appellant well understands the Somali language; when this evidence was given, the appellant had been able to cross-examine the witnesses.

Counsel urged that there was sufficient evidence to show that the appellant was found in possession of property suspected to be stolen, in the terms of s.322 of the Penal Code. The local Chief (PW1) had received information that there was a camel tethered outside El Wak town; PW1 and PW2 proceeded there, and confirmed this. The camel was tethered to a tree, and the appellant and another were sitting nearby. Counsel urged that the evidence of PW1 and PW2 clearly linked the appellant to the commission of the offence: the appellant and his companion were trying to sell the camel which had been reported stolen; and PW3 properly identified this camel as his. Throughout the proceedings only PW3 had claimed ownership of the said camel; and the appellant and his colleague should have explained how they came to be in possession of the camel. This, learned counsel urged, was a proper case of handling suspected stolen property. She urged that the conviction be upheld.

It is clear that the appellant and his companion were not sitting by the camel tethered just outside El Wak for any innocent purpose. Although no evidence was adduced that it is the appellant and his colleague who *stole* the camel, there was sufficient evidence that the two *knew* that the camel had been stolen. Since the true owner had come and asserted his ownership of the camel, it was the duty of the appellant and his colleague to explain how the animal came to be in their possession; but they had no explanation.

I hereby dismiss the appellant's appeal, uphold the conviction, and affirm sentence.

Orders accordingly.

DATED and DELIVERED at Nairobi this 6th day of October, 2008.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Respondent: Mrs. Gakobo

Appellant in person