



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Appeal 75 of 2007

JOHN KOSKEI LIMO ::::::::::::::::::::::::::::::: APPELLANT

VERSUS=

REPUBLIC ::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT

This is an appeal from the Judgment of the Resident Magistrate, Eldoret delivered on 26th February, 2007 in the Chief Magistrate's Court Criminal Case No. 2133 of 2007.

The Appellant had been charged with the offence of stealing stock contrary to section 278 of the Penal Code. It was stated that during the night of 15th and 16th February, 2007 at Chesogor Village in Keiyo District of the Rift Valley Province, he stole one bull valued at Kshs 10,000/= the property of Mathew Chelimo.

Upon being charge, the Appellant pleaded guilty and he was convicted of the offence. He was sentenced to 7 years imprisonment.

This is an appeal against both conviction and sentence.

The Appellant contends inter alia that the Trial Court erred in law and fact in convicting the accused on a plea which is unsafe and unsatisfactory and one which is a equivocal, ambiguous and doubtful in the circumstance.

The Appellant also argues that the Sentence of 7 years imprisonment was harsh and excessive.

The Appellant's Counsel attempted to introduce other grounds which I find are not underpinned in the proceedings, judgment or petition of Appeal. He submitted that it was the appellant who called the Complainant and told him that he had taken the bull and sold it. He stated from the bar that the Complaint Mathew Chelimo never complained to the Police. He said that the Complainant was in Court.

With respect, this presentation is inadmissible and irregular. This is an Appellant Court and a Court of record.

There was a Complaint and the accused was duly arraigned in Court and charged. Otherwise, there would be no case and appeal.

I have considered the grounds of appeal and submissions. The Accused was charged and the charge was read to him in a language he understood.

He pleaded in Kiswahili and said “Ni Ukweli” which means, “It is the truth”

The facts were read to him and he accepted the same to be true. The facts fit the charge. On his own volition, he pleaded guilty. I do find that the plea was unequivocal, clear and affirmative. The accused took away the complainant’s bull without consent or authority of the Complainant. He proceeded to sell the same and at Cheperit Market. He admitted the same to the owner and also to the Court. It was not his property and there is no record that the Complainant had given it to him.

I hereby uphold the Conviction which was proper and sound. With regard to Sentence, the Respondent, the Republic concede that it was harsh and excessive. Counsel submitted that the maximum Sentence for the offence was 14 years. The appellant is young man of 20 years and he can be rehabilitated and be useful to the society.

I entirely agree with the Submissions on Sentence. Accused was arrested on 20 February, 2007 almost a year and ten months ago. (20 months). He has been in custody for the said period. I have taken into account his age.

I do hereby Set aside and quash the sentence by the trial magistrate of 7 years and Substitute it with a sentence of 20 months with effect from the date he was convicted.

Having fully served the said sentence, he shall be released forthwith unless otherwise lawfully held. Orders accordingly.

DATE AND DELIVERED AT ELDORET ON THIS 18TH DAY OF DECEMBER 2008.

M.K. IBRAHIM,

RESIDENT JUDGE.

In the Presence of:

Mr. Chirchir for the Respondent

Mr. Ngala for the Appellant and

The Appellant.