

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 118 of 2007

OLIVER MWAKIO JOMBO APPELLANT

- V E R S U S -

REPUBLIC RESPONDENT

(From the conviction and sentence in Cr. Case no. 1808 of 2006 by C.N.Kerage DM II)

JUDGEMENT

Upon trial with another person on a charge of stock theft contrary to section 278 of the Penal Code the other person was acquitted but the Appellant was convicted and sentenced to serve imprisonment for a term of six years. He appeals to this court against that conviction and sentence on five grounds. The first four are on conviction and are to the effect that the learned trial magistrate erred in rejecting the evidence including the agreement he produced which shows that he bought the stolen bull from Accused 2 in that case and that there was no evidence that he is the one who stole the bull. The one on sentence which is couched on mitigation terms is to the effect that for a father of four the sentence of six years imprisonment is harsh.

In his submissions before me the Appellant urged me to carefully study the evidence on record which shows that he bought the bull from Accused 2. He wondered how he could have got the Accused 2's I.D. card number if Accused 2 did not give it to him when writing the agreement. He said that as a cattle drover he did what he was required to: he got a written agreement when he bought the bull from Accused 2.

In one of his grounds of appeal the Appellant alleged that PW3 (whom he mistook for PW2) saw him buy the bull from Accused 2. The record does not show that PW3 said anything of the sort. What PW3 said is that on the evening of 7th February 2005 at about 7.00 p.m. the Appellant and Accused 2 took a bull to Voi slaughter house where he was guarding cattle and left it there. They returned at about 8.00 p.m. tethered it to a tree nearby and left. They returned the following day at 6.00 a.m. At 7.00 a.m. he left them there with their bull and went grazing his cattle.

I have perused the record. True nobody saw Appellant steal the bull. PW2 said when her husband told her that their bull had been stolen she followed the hoof marks which went past Appellants home towards the Voi slaughter house. PW3 said Appellant and Accused 2 took the bull to the slaughter house. On his part in his sworn testimony Appellant does not disown the bull. He claims that he bought it from Accused 2. Accused 2 denied that and said that the Appellant whom he knew before enticed him to go to Voi to partner with him in a butchery business.

Like the trial magistrate I find Accused 2's story plausible. Having told him that they were going to do butchery business Accused 2 had no reason to raise his antennae when taken to a slaughter house +where they left a bull. I am satisfied that Appellant wanted to be seen driving the bull with Accused 2 to cover himself. The agreement the Appellant produced is a document he prepared to cover his tracks. Looking at it the learned trial magistrate said the signature on it did not appear similar to the one on the Accused 2's ID card. He was right in rejecting the document.

Because he knew he would be sought Appellant took Accused 2 and dumped him in his house and went to sleep in his brother's house.

Having re-evaluated the evidence on record I am satisfied that there was sufficient evidence to convict the Appellant for the offence he faced. As I have said he himself admitted being in possession of the bull and on the doctrine of recent possession he was properly convicted for stealing it. In the circumstances I dismiss the appeal against conviction.

The appeal against sentence has also no merit. The Appellant stole his uncle's bull and did everything he could to cover his tracks. Six years imprisonment for a man who stole his relative's livestock and has a previous conviction on a similar charge is not harsh. It is in fact lenient. This appeal is hereby dismissed in its entirety

DATED and delivered this 23rd day of July 2007.

D. MARAGA

JUDGE