REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

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Criminal Appeal No. 13 of 2005

AMOS TIROP RANDICH ……………………….................…….…………………… APPELLANT

VERSUS

REPUBLIC ………………………………..………………………………………… RESPONDENT

(An appeal from the judgment of the Principal Magistrate at Kapsabet (F. A. Mabele Esq.) dated 27/1/2003 in Criminal Case No. 165 of 2003)

JUDGMENT

Amos Tirop Randich was convicted on 27/1/2003, on his own pleas of guilt to the charges of stealing stock, contrary to Section 278 of the Penal Code, and stealing contrary to section 275 of the Penal Code. He was sentenced to serve a term of six years with six (6) strokes of the cane in the first count, and 3 years in the second count. The sentences were to run concurrently

The particulars of the offences in the first count were that "*between 3rd an 4th day of December 2001 at Kombe S/Location in Nandi District within the Rift Valley Province, jointly with another before Court stole one calf valued at K.Shs. 8,000/- the property of CHELELEIYA ARAP NGETUNY*", while in the second count, the particulars were that "*on the night of 3rd and 4th day of December 2001 at Kombe S/Location in Nandi District within the Rift Valley Province, jointly with another before Court two gallons and one stool all valued at K.Shs. 1,150/- the property of CHELELEIYA ARAP NGETUNY.*"

When the charges were 'read over and explained' to Randich in Kiswahili, he stated '*it is true*' in both instances. The prosecutor proceeded to narrate the facts, as that Randich had given the aforementioned items were found in the possession of a certain lady, who upon being apprehended, led to police to his arrest. Randich is on record as saying '*I admit those facts*', and in mitigation he stated that "*it is true I admit the offence and I ask for leniency*". He also pleaded that the sentences be made concurrent with sentences imposed in three previous similar convictions.

He is now back to court on appeal against the convictions and the sentences on the grounds that the learned Magistrate erred in law and in fact in convicting him as the facts did not support the charge, and secondly because in his estimation, the sentence is illegal.

Mrs. Nyaundi, learned counsel for Randich, whom I shall now refer to as 'the appellant' urged the Court to find that the plea was not unequivocal; that the facts did not support the charge, as the lady who led the appellant's arrest remained anonymous, neither was the material date disclosed.

She relied on Kato v. Republic [1971] EA 542 where the Court of Appeal quoted with approval a passage from R v. Yonasani Egalu (1942), 9 EACA 65 at page 67 "*In any case in which a conviction is likely to proceed on a plea of guilty (in other words, when an admission by the accused is to be allowed to take the place of the otherwise necessary strict proof of the charge beyond reasonable doubt by the prosecution) it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every constituent and that what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally.*"

It was her submission that the offence disclosed was that of handling stolen property and not theft yet the accused was not called upon to plead to all the elements of the offence, and in this regard she relied on Tembere v. R [1990] KLR 353, where the Court of Appeal held that the accused should answer to all the elements of the charge, whose offence the Court described as a highly technical.

She also urged the court to find that the sentences were not only harsh in the circumstances, but the one on strokes was illegal.

Learned State Counsel Miss Oundo, opposed the appeal, mainly on the ground that having pleaded guilty, the convictions and sentences were proper and fair in the circumstance, and also that at the material time the court could order that the accused do receive strokes of the cane, which was a legal sentence then.

I have looked at the charge sheet. I have also reviewed the manner in which the case was handled by the trial Magistrate and I am convinced that the facts as presented to the appellant supported both the charges of theft. He was named as the person who had taken the stolen items to the lady in whose possession the items had been found and those facts would support the charges of theft as contained in both counts. I find that the convictions were thus safe and proper and on this particular ground, this appeal is bound to fails.

I find that at the time of the convictions and sentencing, the sentences in both counts were legal and there would have been no reason to interfere with the same save that following the amendment in Act 5 of 2003, corporal punishment was outlawed. I do in the circumstances set aside the sentence in the first count which is rather harsh and substitute it with sentence of three (3) years imprisonment. The sentence of three years imprisonment in count II remains unaffected. Sentences shall run concurrently.

The appeal is otherwise dismissed.

Dated and delivered at Eldoret this 20th day of March 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of: