



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Criminal Appeal 12 of 2005

AMOS TIROP RANDICHAPPELLANT

VERSUS

REPUBLIC RESPONDENT

**(An appeal from the judgment the Principal Magistrate at Kapsabet (F. A. Mabele Esq.) dated
27/1/2003 in Criminal Case No. 166 of 2003)**

JUDGMENT

Amos Tirop Randich was arraigned before the Principal Magistrate at Kapsabet on 24/1/2003 where he was charged with the offences of stealing stock contrary to Section 278 of the Penal Code and malicious damage to property contrary to section 339 (1) of the same Code.

The particulars of the offence in the first count were that “*on the night of 12/13th day of December 2001 at Kiptunye Location in Nandi District of Rift Valley Province jointly with others already before Court stole one cow and five goats fall valued at K.Shs. 22,000/- the property of HERBAT NGELI*”, while in the second count, the particulars were that “*on the 18th day of December 2001 at Kiptunye Location in Nandi District of the Rift Valley Province, jointly with others already before Court willfully and unlawfully damaged windscreen of motor vehicle registration number KWK 621 make Nissan Sunny valued at K.Shs. 6,000/- the property of HERBAT NGELI*”.

When called upon to plead at the first instance, he pleaded guilty to both counts and after the facts had been narrated to the Court, he stated “*I have heard the facts and I admit them*”. The Magistrate who took cognisance of the fact that he was a repeat offender and that the offence was serious sentenced him to serve 7 years imprisonment with 8 strokes of the cane.

Being aggrieved by the conviction/s and the sentence/s, Randich has now preferred this appeal which is based on the grounds that:

“1. *That the learned Magistrate erred in law and in fact in convicting the accused when the facts did not support the charge.*

2. *That the sentence is illegal.*”

I have as is expected of me reviewed the manner in which the trial was conducted with a view to establishing whether the pleas were unequivocal and also whether the convictions were proper and sentences legal.

I do note that when the facts were narrated to him, the appellant stated “*I have heard the facts and I admit them*” which in my mind was a clear admission thereof. But did the facts support the charges?

I have looked at the facts and the charges and in my mind, the facts were not very clear as there was no indication where or in whose possession the cow was found at the time when it was traced five days after the alleged theft. It was also not clear whose homestead was referred to, nor was it clear whether it was this appellant whom the complainant had identified when he saw four who disappeared from the scene after pelting his vehicle with stones.

With such glaring omissions, the learned trial should have concluded that though he admitted the facts, the appellants pleas were not unequivocal for in the case of R v. Yonasani Egalu (1942) 9 EACA 65 the Court of Appeal stated as follows on 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.*” which was cited with approval in Kato V. R [1971] EA 542.

Be that as it may, records also reveal that though he was charged with the two aforementioned offences to which he had pleaded guilty, he was however only convicted of one of them, which was not in any event specified.

I find that not only could the facts not sustain the charges, but that the conviction for an unnamed charge was not proper in the circumstances.

All in all, I allow this appeal, set aside the convictions and quash the sentence.

The appellant should be released forthwith unless otherwise held in lawful custody.

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

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Miss Oundo for the State

Mr. Mitei holding brief for Mrs. Nyaundi for the appellant