

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal No. 413 of 2003

JOSEPH KIBET

LANGAT.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDENT

JUDGEMENT

The appellant was charged, tried and convicted for the offence of Stealing Stock Contrary to section 278 of the Penal Code. He was sentenced to 5 years imprisonment. He was aggrieved by the said conviction and sentence and filed this appeal. The evidence that was tendered before the trial court can be summarised as follows:

The complainant, P.W.1, told the court that on 5/4/2003 at about 4a.m. he was woken up by his servant, P.W.4 who informed him that some of his cattle had been stolen. He confirmed that three heads of cattle valued at Kshs.62,000/= were missing. P.W.1 reported the theft to Londiani police station and a search was commenced. P.W.1 and two police officers went to the complainant's house and from there they followed the footmarks which went towards Nakuru direction. Near a forest they found some tyre marks of a vehicle which indicated that the cows were loaded into a vehicle from there. At Salgaa trading centre, the complainant enquired from the slaughterhouse and was informed that some cattle had been recovered from some people and taken to the police. He went to the police station and found that the stolen cattle had been recovered. The police informed him that they had arrested two people who had in their possession the stolen cows and who claimed that the animals had been sold to them. They named the appellant and two other people as the ones who sold the cows to them. P.W.1 told the court that the appellant and the other two named people were his neighbours. Later, as the police, P.W.1 and the two arrested people were transporting the animals from Salgaa police station to Londiani police station, they met the appellant and his accomplice and the two people who were under arrest identified the appellant and his accomplice as the ones who had sold the cattle to them. The appellant and his accomplice started running away but the police chased and arrested the appellant but his accomplice escaped. The cattle were later photographed and released to P.W.1. P.W.2, police constable Charles Wachira was attached to Salgaa Police post and on 5/4/2003 at 5.30a.m. he was woken up by a colleague who had received information that there was a vehicle which had got stuck while transporting suspected stolen cattle. They proceeded to the said place and found the vehicle stuck and some people were removing three heads of cattle from it. They found some two people who said that the animals had been sold to them but they had no permits allowing them to transport the cattle. The police helped to push the vehicle out of the trench where it had got stuck and when it came out, the driver drove off without stopping. The police took the two people and the cattle to Salgaa police post and shortly thereafter, police officers from Londiani went there looking for the cattle having received a report that some cattle had been taken there.

P.W.3, a police officer attached to Londiani police station corroborated the evidence of P.W.1 in all material respects.

The appellant gave an unsworn statement of defence and stated that on 4/4/2003 he was in his home and on the night of that day he slept until the morning of 5/4/2003 when he woke up and went to Londiani to look for a certain vegetable dealer. He talked to him about some vegetables. On his way home, he saw a vehicle which had stopped nearby and in it were police officers and the complainant. He was arrested and

taken to Londiani police station where he said he found some other accused persons whom he did not know.

The two people who had been found in possession of the stolen cows were also charged and in their defence, they positively identified the appellant and one Kennedy Cheruiyot Cheres (now deceased) as the people who had sold the animals to them. They said that they had earlier in March, 2003 bought from them two heads of cattle and had known them from that time. They further testified that on 27/3/2003 the appellant had rang them and requested them to go and buy three heads of cattle and they identified the photographs of the cattle as being those of the animals that had been sold to them by the appellant and his deceased accomplice.

I have carefully re-examined the evidence that was tendered before the trial court and I find that there was overwhelming evidence to connect the appellant with the theft of the complainant's cattle. The stolen animals were recovered from the appellant's co-accused and they said that they had bought them from the appellant and the late Kennedy Cheres.

The appellant's conduct of running away when he saw P.W.1 and P.W.3 and the other co-accused was not consistent with that of an innocent person. His defence was rightly dismissed as untenable. I find no merit in his appeal and dismiss the same. The conviction and sentence that had been pronounced by the trial court is confirmed.

DATED, SIGNED AND DELIVERED at NAKURU this 5th day of April, 2006

D. K. MUSINGA

JUDGE

5/4/2006

Judgment delivered in open court in the presence of the appellant and Mr. Gumo for the state.

D. K. MUSINGA

JUDGE

5/4/2006