

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA TA NYERI

CRIMINAL APPEAL 357 OF 2003

CHARLES MURIUKI MUKINYO APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

Charles Muriuki Mukinyo (hereinafter referred to as the appellant) was tried and convicted by the District Magistrate's Court at Mukurweini court for the offence of stealing stock contrary to section 278 of the Penal Code. He was sentenced to serve 7 years imprisonment. Being dissatisfied he has now brought this appeal. The particulars of the charge against the appellant stated that on the 31st day of July 2003 at Ngoru village in Nyeri District of Central Province, He stole one she goat valued at Kshs.3,000/= the property of Njeri Kariuki.

The evidence adduced before the trial magistrate was as follows:

On 31st July 2003, Njeri Kariuki (Complainant) discovered that one of her goats was missing. This was at about 6.00 a.m. She checked around the neighbours home but did not find the goat. She therefore reported the loss at Mukurweini police station. On the 1st August 2003 at about 8.00 a.m. Jane Wairimu (P.W.4) went to her shamba and found a goat tied there. She went back to the shamba at 2.00 p.m. and found the goat still there. She took the goat to her home. At about 3.00 p.m. the Appellant went to P.W.4 and asked her whether she had seen the goat. She confirmed that she had and the appellant demanded to be given the goat. Being suspicious P.W.4 refused to give him the goat. P.W.4 reported the matter to Samuel Kabogo Gathondu who interviewed the Appellant. The Appellant claimed ownership of the goat, however, P.W.2 refused to release the goat to the Appellant but instead took the goat to Simon Kibori (P.W.3) the assistant chief of the area. Simon Kibori took the goat to Mukurweini police station where they learnt that the complainant had reported the loss of her goat.

The Appellant then informed the complainant that he had seen her goat but that P.W.2 had refused to release the goat to him. The complainant went to P.W.4 and was referred to the assistant chief. The Appellant informed the assistant chief that it was the complainant who had given him the goat but the complainant denied this. P.W.3 therefore arrested the Appellant and took him to Mukurweini police station where he was re-arrested by P.C. Robert Muna and charged.

The Appellant made an sworn statement in his defence claiming that it was P.W.2 who offered to sell the goat to him for 800/= but that he refused the offer. Instead he went and called the complainant but that when they reached P.W.2's home they did not find the goat. They went to see P.W.3 and after the complainant talked to him the appellant was arrested the same evening.

From the evidence that was adduced before the lower court, it was clear that the goat which was found tied at a shamba near P.W.4's home is the same goat which had gone missing from the complainant's home. From the evidence of P.W.2 & P.W.4 it is apparent that the appellant admitted having tied the goat at the shamba and claimed ownership of the goat. The evidence of P.W.2 & P.W.4 is consistent with that of the Assistant Chief and that of the complainant that the appellant claimed that the complainant had given him the goat for some work done.

I find that the evidence was sufficient to prove that the appellant was the one who had taken the goat from the complainant's home and tethered it at the shamba. The appellant's allegation that it was P.W.2 who

wanted to sell the goat to him was unfounded and rightly rejected as this was not consistent with the conduct of P.W.2 in reporting the matter to the assistant chief. I am satisfied that there was sufficient evidence to sustain the appellant's conviction. I therefore find no merit in the appeal against conviction.

As regards sentence the trial magistrate misdirected himself in holding that the minimum sentence for the offence was 7 years. That was the position before the amendment of section 278 through Act No. 22 of 1987. The appellant having been treated as a first offender and the goat having been recovered, the sentence of 7 years was manifestly excessive. I would therefore dismiss the appellant's appeal against conviction but allow the appeal against sentence. I set aside the sentence of 7 years and substitute it thereof with a sentence equivalent to the period already served.

Those shall be the orders of this court.

Dated signed and delivered this 1st day of December 2005

H. M. OKWENGU

JUDGE