



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CR. APPEAL NO. 292 OF 2001

*(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE
NO. 426 OF 2001 IN THE DISTRICT MAGISTRATE'S COURT AT
KIGUMO BY P. M. MWANGULU – D. M. 1)*

JAMES KIMANI THUO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

James Kimani Thuo hereinafter referred to as the Appellant is aggrieved by the judgment of the District Magistrate Kigumo in which the Appellant was convicted and sentenced to three years imprisonment for theft of Farm Produce Contrary to Section 8 (1) of the Stock and Produce Act Cap 355 of the Laws of Kenya.

The particulars of the charge against the Appellant were that on 18th day of May 2001 at Delmonte Farm in Thika He stole twenty one fresh pineapples all valued at Ksh.1,050/= the property of Delmonte Kenya Limited.

The facts of the case were that on the material day at about 6.00 am P. W. 1 Dominic Musyoka Mutiso and P. W. 2 Philip Wambua both Security Officers at Delmonte Kenya Limited were on duty patrolling a farm of pineapples when they came across the Appellant who upon being challenged to stop ran away leaving a bag containing 21 fresh pineapples which the Appellant had just harvested from the farm. The witnesses released a dog which apprehended the Appellant. He was taken to Kabati Police Station where He was rearrested by P. W. 3 P. C. David Mweumale who caused the Appellant to be charged with the offence.

In his defence the Appellant denied having stolen any pineapples from the Delmonte Kenya Limited farm. He testified that He was arrested from Kenol by six people who were in a pick-up belonging to Delmonte. He was taken to a pineapple farm where He was beaten up and a dog released on him. He was then taken to Kabati Police Station.

On this evidence the trial Magistrate rejected the defence of the Appellant and found him guilty of the offence as charged.

Seven grounds of appeal have been preferred. I have carefully re-considered and re-evaluated the evidence. There were two versions as to how the Appellant was arrested. The version given by the prosecution and that of the defence.

The trial Magistrate who saw and assessed the demeanour of the witnesses chose to believe the version given by the prosecution. Although the judgment of the trial Magistrate was very brief, it is evident that

He properly directed himself and came to the correct conclusion.

The evidence against the Appellant was quite overwhelming as He was caught in the farm red handed stealing the farm produce. The Appellant's defence that He was arrested at Kenol and then taken to the farm was rightly rejected as it was so obviously unconvincing. It is clear that there was a proper charge laid before the trial Magistrate and the Conviction was proper.

As regards the sentence I am satisfied that the same was manifestly excessive given that the Appellant had already suffered through the dog bites.

I would therefore reduce the sentence to the period already served.

The upshot of the above is that the appeal against conviction is dismissed.

The appeal against sentence is allowed to the extent of reducing the sentence to the period already served.

The Appellant shall therefore be set free unless otherwise lawfully held.

Dated, signed and delive red this 19 th day of December, 2003

H. M. OKWENGU

JUDGE