



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.246 OF 2000

(From Original Conviction and Sentence in Criminal Case No.425 of 1998 of the Senior Resident Magistrate's Court at Kajiado).

RAYMOND KIPKEMEI ROTICH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH
CRIMINAL APPEAL NO.28 OF 2000

(From Original Conviction and Sentence in Criminal appeal No.425 of 1998 of the Resident Magistrate's Court at Kajiado).

JAMES KASMIR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

PROCEEDINGS

20/3/2000:

Mutura for the 2 applicants

Omwega , State counsel for Republic

COURT:

Mr Mutura is not called upon to make submissions

OMWEGA:

I do not support the convictions.

V.V. PATEL

JUDGE

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.246 OF 2000

J U D G M E N T

Criminal Appeals Nos. 246/00 OF NAIROBI HIGH COURT and NO.28/2000 OF HIGH COURT MACHAKOS are consolidated.

The two appellants were accused Nos. 2 and 3 in the Kijiado Magistrate's Court case No.28 of 2000. Both of them were convicted together with the two others, i.e. the 1st and 4th accused in the said case. The convictions of all the above four were for stock theft, contrary to section 278, Penal Code.

The 1st and 2nd accused were sentenced to 18 months imprisonment each whereas the 3rd and the 4th were sentenced to 36 months imprisonment each on 10th March, 2000.

I do not know whether or not the 1st and the 4th accused filed their appeals. However, I have still considered the evidence against them together with the 2nd and 3rd appellants.

It was established that the 1st accused, **DAVID SALIMOI** was found in possession of the skins of some of the stolen animals.

The evidence against the 2nd, 3rd and 4th accused was only that of the 1st and who had named them to the Police as the ones who slaughtered the animals at his place. At the trial the said 1st accused made unsworn defence. In it, it be noted, he said that he did not know that anybody had slaughtered cattle at his place. Be what it may, it is clear that apart from what the 1st accused, **DAVID** said to the Police there was not an iota of evidence to connect the 2nd, 3rd and 4th accused with the stock theft. The 1st accused was an accomplice and the required corroboration was not there at all.

For the reasons given, the appeals of the two appellants viz, **RAYMOND KIPKEMEI ROTICH** and **JAMES KASHIMIR** are allowed. Their convictions are quashed and sentences set aside. On revision I also quash the convictions of **TENGE OLE KONGO**, the 4th accused and set aside his sentence. I order that all the above three be released forthwith.

Dated at Nairobi this 20th March, 2000.

V.V. PATEL
JUDGE