



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 109 OF 2010

ANDREW KIPROP KOSGEIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(An Appeal from the Judgment of the Chief Magistrate Honourable C. G MBOGO in Eldoret Criminal Case No. 3832 of 2010 dated 14th July, 2010)

JUDGMENT

1. The appellant *Andrew Kiprop Kosgei* was charged jointly with another in two counts of stock theft contrary to *Section 278* of the *Penal Code*.

2. In count 1, it was alleged that on 9th May, 2010 at Nzoia forest, the appellant jointly with another stole one calf valued at Kshs. 8,000 the property of *Joseph Kemboi*.

3. In count 2, it was alleged that between the night of 9th and 10th May, 2010, the appellant jointly with another stole one cow valued at Kshs.

25,000 the property of *Willy Kiptoo*.

4. On 7th July 2010, the appellant was convicted on his own plea of guilty in both counts and was sentenced to five years imprisonment in each count. The sentences were ordered to run concurrently.

5. The appellant was dissatisfied with his conviction and sentence. He lodged an appeal to this court vide a petition of appeal dated 20th July 2010. He raised three grounds of appeal which are as follows;-

(i) That the learned trial magistrate erred in law in convicting him on an unequivocal plea of guilty.

(ii) That the learned trial magistrate erred in law in convicting him for the offence of stock theft when the facts stated by the prosecutor did not disclose the essential ingredients of the offence.

(iii) That the sentence of five years imprisonment imposed on each count was excessive in all the circumstances of the case.

6. At the hearing of the appeal on 26th January 2017, the appellant who was unrepresented made brief oral submissions to the effect that he was wrongly convicted mainly because his plea of guilty was not unequivocal.

7. The state did not oppose the appeal. Learned prosecuting counsel *Mr. Mulati* conceded to the appeal primarily on grounds that the facts read to the appellant were vague because they alleged that someone was seen driving away the calf and as there were two accused persons, it was not clear who among them was seen driving away the calf; he relied on the persuasive authority of **Joseph Mburu Muhia V Republic Criminal Appeal No. 569 of 2004 (2007) eKLR.**

8. I have carefully considered the grounds of appeal, the proceedings before the lower court, the brief submissions made by the appellant and the state as well as the authority cited by *Mr. Mulati*.

Having done so, I agree with the learned state counsel that the facts narrated by the prosecutor in support of the charges in the two counts were so vague that they did not disclose the offences preferred against the appellant.

9. The facts only indicated how the calf and cow were stolen but they failed to disclose what the appellant had done which constituted the offence charged. The facts did not even show how or why the appellant had been arrested. In a nutshell, the facts did not connect the appellant with the commission of the offences charged. In the premises, the learned trial magistrate erred in law when he entered a conviction on facts which did not disclose the offences charged.

In my view, it is immaterial that the appellant stated that the facts were true because given the facts that were availed to the court, it is not clear what he was admitting as true.

10. For a conviction based on a plea of guilty to be sustained, the plea of guilty must be unequivocal. This means that an accused person must have pleaded to facts which clearly disclosed the offence he was charged with. I therefore agree with the appellant that he was wrongly convicted in this case. It is thus my finding that the convictions on each count are unsafe and cannot be allowed to stand. The learned Prosecuting Counsel was right in conceding to the appeal.

The appeal is consequently allowed. The conviction in each count is hereby quashed and the sentences set aside. The appellant shall be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at **ELDORET** this 9th day of February 2017

In the presence of:

The appellant,

Ms. Mutheu for the Republic,

Mr. Lobolia Court Clerk.