



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**HCCRA NO.28 OF 2017**

**BENARD KIPYEGON LANGAT.....APPELLANT**

**-VERSUS-**

**STATE.....RESPONDENT**

**RULING**

1. The appellant has applied that the mobile phone and Sh.3,000/= that were recovered from him should be returned to him, because he says those are his properties. The mobile phone was in the name of Hellen Chepngeno, which was produced as prosecution exhibit 2. The Sh.3,000/= was put in evidence as prosecution exhibit 3 by No. 69000 P.C Silvanus Ndolo (PW3).

2. It appears that the police recovered the money from the appellant believing that they were proceeds of sale of the 31 sheep in respect of the offence of stealing with which he was convicted. I confirmed his conviction in respect of stealing of the 31 sheep on 2/2/2017. Based on the evidence of PW3, it was not possible to order restitution in favour of the appellant or the complainant in terms of section 178 (1) of the Criminal Procedure Code (Cap 75) Laws of Kenya.

Similarly based on the evidence of PW3, it was not possible to make a restitution order in favour of Hellen Chepngeno or the appellant in respect of the mobile phone.

3. It follows from the evidence of PW3 that these are ownership disputes which should be litigated and determined by a civil court. It is that court which will decide whether the sh.3,000/= belongs to the appellant or to the complainant namely, Keronke Ole Kishau. It is also that court which will decide whether the mobile phone belongs to the appellant or Hellen Chepngeno .

4. It is the practice in this country to allow parties to pursue the ownership of disputed properties in a civil court. This procedure was approved by the Court of Appeal in *Alinyo and Another vs R (1974) E.A. 544*. That court held that where ownership of goods is in dispute between the accused and the complainant, the best course is to leave the issue of ownership to be decided by a civil court

5. The same procedure was followed in *Sargent v Gautama (1968) E. A 338*. In that case it was held that where parties have adverse claims to each other, the proper procedure is to file an interpleader application under **Order 34 of the 2010 Civil Procedure Rules**, which are the enabling rules made pursuant to **section 58 of Civil Procedure Act, (Cap 21 Laws of Kenya)**.

6. In the circumstances, the appellant, the complainant and Hellen Chepngeno are at liberty to have the issue of ownership of both the sh.3, 000/= and the mobile phone determined by a civil court. It is also open to the office of the Director of Public Prosecutions to file an interpleader application in a civil court under Order 34 of the 2010 Civil Procedure Rules.

7. The appellant, the complainant and Hellen Chepngeno are at liberty to pursue the ownership of those prosecution exhibits in a civil court. Finally, the office of the Director of Public Prosecutions is also at liberty to file an interpleader application in terms of Order 34 of the 2010 Civil Procedure Rules.

8. In the light of the foregoing, I hereby dismiss the appellant's application for restitution

Ruling delivered in open court this **22<sup>nd</sup> day** of **February 2017** in the presence of the Appellant and Ms Nyaroita for the Respondent.

**J. M. BWONWONGA**

**JUDGE**

**22/2/2017**