



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL NO. 182 OF 2015.

[Arising from PM's Sirisia Court Criminal case No. 125 of 2015]

CALEB WAFULA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

Caleb Wafula Sisenda appealed against Conviction and the sentence of 7 years Imprisonment which was handed to him by the lower court for an offence of handling stolen goods, contrary to section 322(2) of the Penal code. This offence was an alternative count to a main count of stealing stock, contrary to section 278 of the Penal Code.

The particulars of the offence in the alternative count are that on the 2nd day of February at Malakisi slaughter house, Mwarlie sub location, Malakisi location within Bungoma county, the appellant other than in the cause of stealing dishonestly handled on black cow valued at Kshs. 29,000/= having reasons to believe it to be stolen property or fraudulently obtained.

The prosecution case is that in the year 2003, PW2 who's a neighbour of PW 1, the complainant in this case, sold a cow which later gave birth to black calf with some white dots on its lower limbs. On 2/2/2015, at about 4.00 am PW 1 woke up to prepare her children to go to school. It's then she noted her cattle, the one she had been sold to by PW2 had been stolen. She informed her husband and later reported the matter at Bungoma Police station.

That very same morning, at about 7 am PW4 who resides at Malakisi was going to open his shop. He saw a person in possession of one black cattle. After he opened the shop he went to the slaughter house at Malakisi. He saw the very same cattle. He was told it was for sale. The appellant was the person selling it. The appellant offered to sell to him at Kshs. 12,000/=. PW4 suspected it was stolen as the offered price was far below its market value of which was about 28,000/=. He decided to call the police. PW 3 and some other officers were instructed by the O.C.S Malakisi police station to attend to the case. They went there and found the appellant surrounded by members of the public who were inclined to lynch him. They rescued him and recovered the cattle. When the appellant was questioned on how he had obtained the cattle, he said at one point that he had got it at Chwele and at another point he said he got it at Mayanja. He was taken to the police station as well as the animal. A signal was circulated to the police stations of its recovery.

On 6/2/2015 PW1 was informed about the recovered cattle. She went to SangoMalakisi. She saw it and positively identified it. PW2 was called and he equally identified it. The cow was photographed and released to PW1. The appellant was then charged.

His unsworn statement in defence is that on 2/2/2015 he was walking to Malakisi near BAT. After passing Sango bridge, before arriving in the market, he found many people. He diverted into a pub. He disagreed with PW3 and PW4. The investigating officer threatened to frame him. There was a cattle abandoned in the market. They used it to fix him.

The appellant raised 9 grounds of appeal of which I have gone through and found in want of support by the evidence on record. They appear to have been copied from another appeal case

The Judgment by the trial court well weighed the issues in the case. The prosecution case is clear as the day that the appellant was arrested in possession of the said cow hours after it had gone missing. The only point which was not made clear is whether the person PW4 saw in possession of the cow while going to open the shop was the very same person he found in its possession at the slaughter house selling it. If this point had been made clear, the trial court would have been entitled to convict the appellant of the main count of stealing stock, basing such conviction on the doctrine of "Recent possession" of which he still well invoked while convicting him on the alternative count.

It was established the cow was stolen though the thief was not seen stealing it. The appellant was found with it a few hours after it had been stolen. A cow by its nature is unlikely to change hands easily by way of sale especially in the very early morning hours which would make any genuine buyer be wary. The appellant could not give a reasonable or plausible explanation on how he got into its possession. These circumstances fits the consideration in Malingi = VS Republic [1989] KLR 225 of which the trial court relied on. It therefore follows that if PW4 would have ascertained the appellant was the very same person he had seen earlier with the cow, the main count would have been sustained. That bit of evidence lacking, it was absolutely safe do convict the appellant on the 2nd Count. The lower court rightly pointed out that the appellants defence was flimsy and an after thought. He did not cross examine it and is in want of details. The woman they disagreed about was not disclosed and the reason for such disagreement and also the pub they were in. It is a smoke screen defence.

It was rightly rejected.

The offence carries a maximum of 14 years imprisonment with hard labour. Its a serious offence. 7 years imprisonment is not by anyway harsh and excessive. I find no reason to interfere with the conviction and the sentence. The appeal is dismissed for want of Merit.

Judgment Read and delivered in open Court in the presence of Mrs. Njeru and the Appellant.

Dated this 14th day of **June** 2017 at **Bungoma**.

S. GITHINJI

JUDGE.