REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 83 OF 2014

PATRICK MUTHUI KAUSIA.....APPELLANT

VERSUS

REPUBLIC….....RESPONDENT

(*From conviction and sentence in Mwingi SRM Criminal Case No. 547 of 2014 – M. W. Murage Ag. SRM*)

JUDGMENT

The appellant was charged in the subordinate court with stealing stock contrary to section 278 of the Penal Code. The particulars of the offence were that on the night of 26th and 27th August 2014 at Kaliluni Sub location in Migwani District Kitui County stole one he goat valued at Kshs. 4,000/= the property of Kausia Nzoka. He was brought to court on 29th August 2014. When the charge was read to him he was recorded as having stated that it was true. The matter was then put for mention on 1st of September 2014 when facts were summarized by the prosecutor. The accused then said that the facts were correct. He was thus convicted and sentenced to serve 7 years imprisonment.

The appellant has now appealed to this court on the following grounds:-

1. That the learned magistrate erred while convicting and sentencing him severely without the option of a fine yet he pleaded guilty without giving the court a hard time.
2. The learned magistrate erred while convicting and sentencing him without considering that he was a first offender and without showing leniency.
3. The learned magistrate erred while convicting and sentencing him without considering that he was the sole provider to his family and children who included school going children and their mother.
4. The learned magistrate erred while convicting and sentencing him without considering that the complainant was his step mother and the case arose from an existing grudge.
5. The learned magistrate erred when convicting and sentencing him severely without giving him a chance to mitigate before considering the matter.
6. The learned magistrate erred in law and fact when convicting and sentencing him very severely without considering that this was a family issue.

At the hearing of the appeal, the appellant stated that the goat belonged to his father. That the sentence was harsh and that he had children in school. He was thus asking the court to reduce the sentence and to consider the proceedings and discharge him.

The learned Prosecuting Counsel Mr. Orwa opposed the appeal. Counsel submitted that the charge was read to the appellant in a language he understood. He entered a plea of guilty which was unequivocal. In mitigation he said what he has said in this court on appeal. In counsel's view the sentence of 7 years imprisonment was appropriate as the maximum sentence for the offence was 14 years imprisonment.

In response to the prosecuting counsel's submission, the appellant stated that he wanted the court to consider that the issue was a family matter and that the goat belonged to his father.

This is a fist appeal. As a first appellate court, I am duty bound to consider the record and the evidence to come to my own conclusions and inferences. The appellant was convicted on his own plea of guilty. He has now appealed both on conviction and sentence though in his submissions he has dwelt on the sentence.

With regard to the conviction, I have perused the record. The charge was read to the appellant in Kiswahili language and he stated that it was true. The facts were summarized about three days later and he admitted the facts. He was thus convicted. In my view the plea of guilty of the appellant was unequivocal. The facts summarized by the prosecutor disclosed all the elements of the offence of theft of livestock. I thus dismiss the appeal on conviction.

With regard to sentence, though the appellant states that he was not allowed by the trial court to mitigate, the record shows otherwise. In his mitigation the appellant clearly stated that he had a wife and five children. He also stated that he wanted to be given a chance to pay school fees for his children. It cannot thus be said that he was not allowed to mitigate.

On appeal the appellant is now saying that the goat belonged to his step mother or his father and that the matter being a family matter he should be given a lenient sentence. The facts summarized did not indicate that the goat belonged to a relative of the appellant. The appellant also did not say so in his mitigation. The magistrate was thus not able to take into account that fact. The trial court cannot thus be blamed for not considering that the issue was a family matter.

The appellant was sentenced to serve 7 years imprisonment. The prosecutor stated that the appellant had no previous record. As such the appellant was treated as a first offender. The goat was worth 4,000/= and it was recovered. The appellant also pleaded guilty when he was first brought to court. In my view for a first offender with the goat having been recovered and the fact that the appellant pleaded guilty on his first appearance in court, the sentence of 7 years imprisonment in the circumstances was harsh and excessive. I thus exercise my discretionary powers to reduce the sentence. In my view a sentence of 3 years imprisonment would have served as a good lesson to the appellant.

To conclude I dismiss the appeal on conviction. I uphold the conviction of the trial court. With regard to sentence, I set aside the sentence imposed and order that the appellant will serve 3 years imprisonment from the date on which he was sentenced by the trial court.

Dated and delivered at Garissa this 2nd day of June, 2015

GEORGE DULU

JUDGE