



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO. 266 OF 2012

JOSEPH IRESA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. This is a criminal appeal brought by the appellant in person against the sentence in Criminal Case No. 577 of 2012 for the offence of stealing stock contrary to **section 278** of Penal Code passed on 29th November, 2012 by T.A. Sitati, Ag. SRM Kehancha in which the appellant was sentenced to 10 years imprisonment.

2. The Appellant, has set out three grounds of appeal as follows:-

a) That having been working for the complainant in the case at lower court, I was given 4 cattle which I took to a nearby field to graze as I went to watch football. Somebody stole them but I was coerced by the court clerk, the police and the complainant to agree to the offence. The exhibits(two cows) was neither linked to me, nor in my possession.

b) The trial magistrate erred in both law and fact by failing to produce the exhibits(2 cows) to support the facts read by the prosecutor. This is a total injustice.

c) The sentence is too harsh when my record is clean.

d) The appeal be allowed and sentenced quashed or any order deemed fit to grant during the hearing of this appeal.

3. In his submission in person even as a lay person, the appellant says, he was accused of stealing, stock theft. I was first sentenced to 2 ½ years. I went to prison on 20th November, 2012. However, while in prison, on 29th November, 2012 I was returned to Kehancha court, where I faced other charges, I did not understand those charges. I pleaded guilty to them. I thought I was pleading to the previous charges which were also of stock theft. I was then sentenced to 10 years imprisonment. When I was supplied with the proceedings, it was stated that I was arrested by area chief after I was accused by my brothers. I disagree with those facts.

4. The state's submission are as herebelow:

The appeal arises out of the offence of stealing stock, contrary to section 278 of the penal Code, where the appellant was convicted and sentenced to 10 years imprisonment. This court is hearing

this appeal for the first time. It would have the privilege of reading the lower court's proceedings and we the state- feel tha the appellant was wrongfully convicted on a plea purported to be a plea of guilty but from the proceedings, and in particular, Page 3 of the same, the appellant in reply to the charges that were read to him stated, quote:

***"Ni ukweli nimeiba, lakini nilitumwa"** this would not be a plea of guilty, it is not equivocal. The court ought to have entered a plea of **NOT GUILTY** and proceeded to hear the matter to its logical conclusion.*

5. Further, looking at page 5 of the proceedings, where the trial court issued the sentence, we note that the trial court indicated that the appellant was a repeat offender which fact ordinarily would have been supported by records of the previous convictions. But the same was not done.

6. In closing, we- the state- feel that it is in interest of justice that this court do exercise its discretion and either;

1) Order that this matter go for re-trial or

2) Set the appellant at liberty owing to procedural defects visited upon him during the trial.

As such I do not oppose the appeal.

7. The court finds that for reasons given by the appellant that he was hoodwinked, and coerced into pleading to the offence, he thought was the offence whose sentence he was currently serving. Additionally, and more importantly, the state, avers that the appellant response was not tantamount to the **Plea of guilty** but to the **Plea of not guilty**. This procedural defects must be construed in his favour.

8. Accordingly, the court allows his appeal and sets the appellant free. The time he had served in prison is long enough- two or so, years, that to order a re-trial would not be in his interest.

9. Thus the court orders for his liberty unless he is lawful held on different matter.

Dated and delivered at KISII this 4th day of December, 2014

C.B. NAGILLAH,

JUDGE.

In the presence of:

Appellant in person

Otieno for the respondent

Edwin Mongare Court Clerk.