

Yakuti v Republic

High Court, at Mombasa

July 6, 1992

Omolo J

Criminal Appeal No. 415 of 1991

July 6, 1992, **Omolo J** delivered the following Judgment.

The appellant Barak Juma Yakuti, was tried and convicted on two charges; one of house breaking and stealing contrary to section 304(1) and 279(b) of the Penal Code, and the second one of being in possession of game trophy contrary to section 42(1)(b) of the wildlife Conservation and Management Act Cap 376 of the Laws of Kenya. On the first charge it was alleged against the appellant that on the 28th August, 1991 at Barani Village in Malindi, the appellant broke and entered the dwelling house of Victor Bwele Muta with intent to steal from that house and he stole from therein one radio cassette valued at Shs.4,000/- belonging to Victor Bwele Muta. On the second charge it was alleged that on the same day, the appellant was found in possession of game trophy viz. 2 leopard skins valued at Shs.120,000/- and that he had no valid certificate of ownership in respect of the same skins.

The appellant and Victor lived in the same block but in different rooms, and it would appear that the appellant was Victor's landlord. Victor left his house and went to his place of work. When he later came back he found his radio cassette missing, and he alerted his neighbours. The radio cassette was eventually traced in the house of Athman Mzee Hassan (PW.2), and according to that witness, the appellant took the radio to his house and left it there saying he would come back for it later. When the appellant did not come back, PW.2 went to look for him in his (appellant's) house, and when PW.2 was there the police came and found both of them there. Mwanajuma Adam Said (PW.4) is a close neighbour of PW. 2 and she supported the evidence of PW.2 that it was the appellant who took the radio to PW.2's house. PW.4 swore that that morning at 10 a.m. she saw the appellant going to the house of PW.2 and that the appellant was carrying a white bag. When found in PW.2's house, the radio cassette was contained in a white bag. On the second count, PC. Nathan Amboga (PW.5) swore that when he went to the appellant's house he searched it and that he found the two leopard skins in the kitchen of that house. The evidence of PW.5 on this point was supported by that of Lenox Kiti (PW.6) who was a neighbour of the appellant and who said that he saw the appellant carry the leopard skins into the kitchen and that the appellant had told him that there would be a deal over the skins during the same evening. In ground 1 of his petition of appeal the appellant attacks his conviction on the second count, and he alleges that the house in which the skins were found was occupied by six other persons, and that it was not correct for the magistrate to conclude that it was the appellant who had kept the skins in the kitchen. That contention is untenable taking into account that the evidence of PW.6, if that evidence is to be believed. That witness, as I have said, told the magistrate that he saw the appellant carry the leopard skins and the appellant told him there would be a deal over them that evening. The magistrate accepted the evidence of PW.6. In ground 2 the appellant attacks his conviction on the first count saying that the radio was not found in his house but in the house of PW.2. That is correct, but PW.2 explained how the radio came to be in his house, and he was supported by PW.4 who saw the appellant go into PW.2's house carrying a white bag. Once again the magistrate believed the evidence of PW.2 and that of PW.4. There was accordingly consistent evidence by the prosecution witnesses that the appellant took the radio cassette to the house of PW.2 and also that it was the appellant who took the two leopard skins to the kitchen in which they were found by PW.5. The learned magistrate was entitled to believe the witnesses for the Republic, and to reject the unsworn statement of the appellant. In my view, the magistrate was not only entitled to do so but was in fact right in believing the witnesses for the Republic. Their evidence proved the two charges brought against the appellant beyond a reasonable doubt and I accordingly dismiss the appeal against conviction of the appellant in the two counts. The sentences imposed on him were lawful, and I do not see any reason for my interfering with them. The appeal against sentence also fails, and I dismiss it.