

Mutune v Republic

High Court, at Machakos (Appellate Side) April 2, 1985

O’Kubasu J

Criminal Appeal No 973 of 1984

(Appeal from the Resident Magistrate’s court at Yatta, R N Kamiro Esq, Criminal Case No 214 of 1984)

Advocates

Mr Nyagah for respondent

Appellant absent and not wishing to be present

April 2, 1985, O’Kubasu J delivered the following Judgment.

The appellant was convicted of stealing stock contrary to section 278 of the Penal Code (cap 63) and sentenced to seven (7) years imprisonment with six strokes of the cane.

There was evidence to the effect that the two bulls went missing during the night of April 26 and April 27, 1984. Then on April 28 the appellant sold this same two bulls to PW2.

The appellant in his unsworn statement denied having sold any bull to anybody. But PW2 produced a receipt showing the particulars of the appellant as the person who had sold the two bulls. This was the normal practice in that part of the country.

The learned trial magistrate considered whether PW2 was an accomplice and found that he was not. Again the learned trial magistrate went on to state why he found PW2 to be a credible witness.

Upon my own independent assessment of the evidence before the lower court I am satisfied that the appellant was guilty. In my view the appellant was convicted upon very clear evidence. He was properly convicted. The sentence imposed was the minimum prescribed by section 278 of the Penal Code.

I find no merit in this appeal. I order that this appeal be and is hereby dismissed in its entirety. Order accordingly.