

REPUBLIC OF KENYA

Itotia v Republic

High Court, at Nairobi June 19, 1985

Cockar J

Criminal Appeal No 5 of 1985

(Appeal from the Senior Resident Magistrate's Court at Kiambu, J Ombonya, Esq)

Advocates

Appellant absent, not wishing to be present and unrepresented

Maj J Q Mbewa for respondent

June 19, 1985, Cockar J delivered the following Judgment.

It is not disputed that on the nights stated in the three counts the cows as stated in the particulars of the three charges belonging to the said three complainants were stolen and about a month later they were found in possession of PW 4 an engineer with Bata Shoe Company and a resident of Lari Division, PW 5 accountant with Uplands Bacon Factory, at Uplands. PW 6 a teacher at Escarpment Primary School, and PW 7 a teacher at Kamiruthu Primary School, and a resident of Githiga. Each one of these witnesses claimed that he had bought the cows in his possession from the appellant.

PW 4 said that the appellant on October 10, 1984 told him that he was a cattle dealer and had been sent to him by his, PW 4's neighbour. He produced a sale agreement he made with the appellant hearing the appellants' identity card number.

PW 5 said that he bought the two cows from the appellant on September 25, 1984 and gave the purchase money to the wife of PW 6 a friend of his, on September 18, 1984 to pay the appellant and obtain a receipt. He produced the receipt as an exhibit.

PW 6, a friend of PW 5, said that the appellant, a former pupil of his, sold him three cows on September 15, 1984 and he produced a sale agreement made between him and the appellant.

PW 7 said that on September 26, 1984 a son of PW 6 called him from the school to buy a cow. He went to the house of PW 6 and met the appellant there. He bought one cow from the appellant and produced a sale agreement which was written by the appellant.

In his unsworn statement the appellant merely described how he was arrested on the night of October 13, 1984, taken to the police station and beaten. He said he had sold only one cow which was his own to PW 4.

The trial magistrate had accepted the witnesses PW 4, PW 5, PW 6 and PW 7 as innocent, genuine buyers. I am satisfied that he did so properly and with good reasons. I do not see any merit in the defence of the appellant nor in this appeal. This is a safe conviction. The trial magistrate has not stated that in respect of which count has he sentenced the appellant to a term of 7 years imprisonment with 6 strokes. The learned principal state counsel supports the conviction. Appeal against conviction on each count is dismissed. The sentence imposed by the trial magistrate is set aside and substituted by a sentence now imposed of 7 years imprisonment with 2 strokes on each count, the prison sentence to run concurrently from the date of sentence in the lower court. The appellant shall therefore serve in all a 7 years' term of imprisonment and shall receive a total of 6 strokes.