

REPUBLIC OF KENYA

Mukuri v Republic

Court of Appeal, at Kisumu June 19, 1986

Hancox JA, Platt & Gachuhi Ag JJA

Criminal Appeal No 36 of 1985

(Appeal from the High Court at Kisumu, Schofield J)

June 19, 1986, Hancox JA, Platt & Gachuhi Ag JJA delivered the following Judgment.

The appellant was convicted by the senior resident magistrate at Kisii of stealing stock, contrary to section 278 of the Penal Code. He was sentenced to the minimum statutory sentence of seven years imprisonment and to receive 5 strokes of the cane. His appeal to the High Court (Schofield J) was dismissed. He now appeals to this court on nine grounds which can be summarized as :-

1. That his residence is Mashangwe area close to the place of arrest.
2. He was arrested on his way home from felling building trees.
3. Courts below concluded he was a stock thief though cattle were not near his boma.
4. That cattle were found in a boma of someone else who was not called to testify.
5. That witnesses having been collected by the police gave hearsay evidence.
6. That complainant did not identify him as a thief.
7. That he was only a victim of suspect.
8. That he was convicted on an uncorroborated evidence.
9. That the trial court imposed manifestly excessive sentence.

The evidence before the trial magistrate clearly indicated that the appellant was in possession of three stolen cattle in Masai land away from his actual home. In his unsworn statement, he admitted that the cattle were recovered near the place he was cutting trees for building a house. Again in his statement to the police which was admitted after the trial within a trial he admitted having stolen the cattle.

There was no explanation why the appellant had gone to cut trees so far away from his house and in the bush where the stolen cattle were grazing. There were concurrent findings by the lower courts that the appellant was found in possession of the stolen cattle which he had stolen a night before. These were findings of fact with which we cannot differ without good reasons.

The learned state counsel supports the conviction and sentence. This court is only concerned with a point of law on second appeal. The appeal does not raise any point of law. There is no merit in this appeal which we order to be dismissed. Accordingly this is the order of the court.