



Republic of Kenya

Court of Appeal, at Nairobi

Criminal Appeal No 78 of 1984

Ngugi

versus

Republic

(Appeal from the High Court at Nairobi, O’Kubasu J)

Child – meaning of - Age of Majority Act – full age – effect of attainment of – Children and Young Persons Act.

Appeal - on a point of law - point based on facts in evidence - matters that can be raised at appeal.

The appellant with two others were convicted on two counts of stealing and being in possession of stolen property contrary to section 268 of the Penal Code.

Their first appeals were consolidated, heard and dismissed.

The appellants contended that there was no sufficient evidence to support the doctrine of recent possession and that two of them were categorised to fall under Children and Young Persons Act and should not have been placed with grown ups and should have been given non-custodial sentence.

Held:

1. A person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years and a young person means a person who is of the age of sixteen years or more or under the age of eighteen years (section 2 of the Age of Majority Act and section 2 of the Children and Young Persons Act). Under the two provisions the appellant cannot be a child or described as a young person.

2. An appeal to this court is on a point of law and cannot be based on facts in the evidence.

Appeal dismissed.

November 18, 1985, Nyarangi JA, Platt & Gachuhi Ag JJA delivered the following Judgment.

The appellant with two others who did not appeal to this court were charged with stealing and possession of property contrary to Penal Code. They were convicted on both counts and sentenced to serve the statutory term of seven years’ imprisonment plus one stroke on each count, the terms of imprisonment ordered to run concurrently. Their appeals to the High Court were consolidated, heard and dismissed. The appellant now appeals to this court alone on four grounds which can be summarised as follows:

1. there was not sufficient evidence of common intent and that the judge erred in equating joint possession with common intent,
2. no evidence was tendered that the person held at Thika Police Station was held in connection with the sheep hold at Thika Police Station.
3. no evidence was led that the sheep held at Thika Police Station were recovered from the appellant and that courts below erred in relying on the doctrine of recent possession to convict.
4. there was to sufficient identification. During the hearing the appellant handed in supplementary grounds which were:
5. In the High Court two of the appellants were categorised to fall under the Children and Young Persons Act who should not be placed with grown up people and who should have been given non-custodial sentence and
6. that the appellant is considered as a young person by the other inmates and that he should not be in such a big prison as Kamiti.

The appellants had wished to be present before the High Court to argue their appeal but due to a letter dated 14th September 1983 from Kamiti Main Prison, their appeals were heard in their absence. However the appellant appeared before this court in prison.

An appeal to this court is on a point of law and cannot be based on facts in the evidence.

The evidence against the appellant was very clear. Theft of sheep had been reported to Juja Police Station circulated the report to her police stations one of which is Thika Police Station. The possession of sheep by the appellants at that odd hour near a butchery raise suspicion led to the arrest of the appellant including others. So they were detained at Thika Police Station. The sheep were identified by the owners, one of whom, Samuel Kamiti Mutinga, an employee of Nicholas was a special owner under the provision to section 268 of the Penal Code (cap 63). The fact that the appellant was negotiating for the price of the sheep with the butcher on behalf of the other convicts, which process was far below what the animals would fetch in a proper transaction, goes to indicate that the appellants had stolen the animals and were ready to dispose them cheaply which fact would have deprived permanently the owners and special owners of their animals. There was common intention and all were held in connection with the offence charged.,The doctrine of recent possession was rightly applied. The question of age was raised by the learned Judge on appeal before the high Court. He considered it and dealt with the issue. The appellant has raised it himself just because it had been raised by the judge. During the trial, the appellant gave his age as 19 years. He informed this court that he is 20 years now. Section 2 of the Age Majority Act cap 33 provides:

“A person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years.

Under the Children and Young Persons Act cap 141 section 2 defines: “child” under the age of fourteen years.

“Young person” means a person who is of the age of sixteen years or more or under the age of eighteen years.

Under the provisions of these two Acts, the appellant cannot be a child or described as a young person so as to be dealt with under the Children ad Young Persons Act (cap 141). What may be troubling him is to often out how he can be separated from the older inmates, who due to the appellantís age may have harassed him or subjected him to some hardship. The court is unable to alleviate his hardship but we can send his pleas to the provision Authority.

The Learned State Counsel supports the conviction and the sentence. We have considered the ground of appeal before us. We do not find any merit in them and we order the appeal to be dismissed.

Delivered on the **November 18, 1985**

Nyarangi JA, Platt & Gachuhi Ag JJA