



**Republic v Myonga (Criminal Case E723 of 2023)
[2023] KEMC 321 (KLR) (6 December 2023) (Judgment)**

Neutral citation: [2023] KEMC 321 (KLR)

**REPUBLIC OF KENYA
IN THE VOI LAW COURTS
CRIMINAL CASE E723 OF 2023
AM OBURA, CM
DECEMBER 6, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AMON MYONGA ACCUSED

JUDGMENT

1. The Accused was charged with the offence of Stealing Stock c/s 278 of the [Penal Code](#). According to the charge sheet, the particulars of the offence read that:

“On 12th day of November 2022 at around 1700 hours at Kirumbi area in Voi Sub-County within Taita Taveta County, stole a goat valued at Kshs. 10,000/= the property of Catherine Wanjala Kichoi.”
2. He pleaded not guilty on 15th November 2022.
3. Prosecution case
4. Five (5) Prosecution witnesses testified in support of the Prosecution case. In essence, the Prosecution case is that the Complainant (PW1)’s white and black goat went missing on 12th November 2022 while grazing.
5. The Complainant and her husband Herman Njumwa(PW2) allegedly learnt of the missing goat from the caretaker, one Carlos Mwagholo (PW3). It is alleged that upon searching for the missing goat, they eventually found the goat skin and intestines within a certain compound which the Accused was guarding. It is also alleged that the goat’s head was also recovered from a store within the same compound.



6. With the help of villagers, PW3 allegedly looked for the Accused and located him in a meeting with some villagers. It is alleged that upon being confronted with the information of the missing goat and the recovery of the goat head, skin and intestines, the Accused admitted that he had slaughtered the goat and sold some meat at Kaloleni. The Prosecution witness PW3 further stated that the Accused offered to compensate the Complainant so that the matter is not escalated to the Police.
7. The incident allegedly attracted a large crowd who demanded that action be taken due to the rising number of similar cases in the village. The matter was then reported to the Police and the Accused person was arrested. Photographs of the goat skin and the head were produced in Court by Inspector Peter Kyalo (PW 4), a Police Officer from Voi Police Station. The Certificate of photographic evidence was PEXT 3.
8. PW 5 was PC Mwachafu Mohammed, a Police Officer from Voi Police Station. He confirmed that the matter was reported to Police and the OCS instructed them to rush to the scene as the suspect was about to be lynched. They allegedly found the Accused hiding in the ceiling of the house. They persuaded him to disembark, . It is alleged that the Accused led the Police Officers to the place where the goat skin and the head were recovered. He was arrested and later charged with the present offence.
9. Defence case
10. In his defence, the Accused tendered unsworn evidence. He testified that on a date he did not recall, he was confronted by people while in Church. They were allegedly armed with rungas and pangas and demanded that he takes them to the place where he usually grazed livestock. He was allegedly informed that a goat was stolen the previous day. The Accused denied involvement in the commission of the alleged offence. They then left him alone at around 3pm.
11. However, at around 10pm, his house was surrounded by people who threatened to lynch him and demanded that he opens the door. He was allegedly rescued by Police who arrived after his neighbour phoned them.
12. The Accused further claimed that PW3's sister once caused him grievous harm on his right hand near his wrist and that there was an intention to lynch him and destroy the P3 form to frustrate him. He also challenged the evidence of the Prosecution witnesses which he termed contradictory. He also stated that the photos of the alleged goat head showed that it had 2 heads which he found questionable.
13. The Accused also called Benson Mwakava (DW2) and Obadiah Mkalla (DW3). They claimed that the goat skin was recovered in a neighbour's house and not the Accused's house.
14. Court's analysis and determination
I have given due consideration to the evidence adduced by the Prosecution witnesses and the Defence witnesses. The main issue for determination is whether the accused committed the offence of stock theft as alleged beyond reasonable doubt.
15. Under Section 268 of the [Penal Code](#) the law defines the offence of stealing thus:
 - (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.



16. Section 278 of the *Penal Code* provides that:

“If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”

17. In the present case, there was no eye witness account from a witness who saw the Accused person actually taking away the Complainant’s goat. The evidence available is from PW1, PW2 and PW3 that the Complainant’s only goat used to graze alongside PW2’s goats. However, on the material date, it went missing and was not returned home. This was on 12th November 2022.
18. There was further evidence that upon searching around the neighbourhood, with the help of the village elder and community policing members, they allegedly chanced upon the goat skin at the compound where the Accused worked as a caretaker.
19. There was also evidence that they went to look for the Accused and found him at a meeting before leading him back to his house. He also confirmed that he was found in a meeting and taken back to where he used to graze livestock before being taken to the house.
20. Although the Accused denied the offence, the sequence of events as stated by the Prosecution witnesses tallied to a large extent with his own account. It lends credence to the Prosecution case. Moreover, his witness DW2, was not present when the offence took place. He however, confirmed that he heard that the items were actually recovered from the compound where the Accused lived. It also emerged that he had employed the accused as a caretaker hence his evidence was basically that he had known the accused to be of good conduct.
21. As for DW3, he did not strike me as a credible witness. He gave a contradictory account from DW1. He claimed that no recoveries were made at the Accused’s house yet he was not present. He hailed from a different village, that is Ganda Village. He did not also report to Police that the items were actually found at one Amani’s home and not the Accused’s house or compound. His account cannot be believed given that as a Village elder, he had a public duty to assist in the proper administration of justice and to ensure the best evidence and the real culprit are availed in Court.
22. DW3 could also not link the claims that the Accused was attacked and robbed to the present theft case.
23. As for the Accused, I find that he was not a stranger to PW1, PW2 and PW3. They knew where he lived. PW3 knew him by his nickname Omwami although he denied that it is his name. He was also arrested in the same house and same compound where the recoveries were made. The evidence of the Prosecution leaves no doubt that no time was lost to secure his arrest. He was rescued from being lynched, a fact which he confirms. There was also evidence that he initially sought forgiveness and offered to compensate the Complainant. He never denied this fact or challenged this evidence during cross-examination or in his own defence. In my view, his evidence that there was a grudge between PW3’s nephew and the Complainant and himself is doubtful and an afterthought.
24. I also found that although the arresting officer contradicted the other witnesses as to the exact place where the recoveries were made, it was not fatal as the witnesses were consistent and corroborated one another. The fact that the minor who initially revealed that he saw the skin at the Accused’s compound was not called to testify is also not fatal as PW1, PW2, and PW3 also went and saw the goat skin there.
25. The goat skin and goat head were also photographed and the photos produced in Court.



26. In *Simon Musoke -Vs- Uganda* (1958) EA 715 cited in the case of *Teper -Vs- Republic* [1952] 2 ALLER 447 the court held as follows with regard to circumstantial evidence:

“It is also necessary before drawing the inference of the Accused’s guilt from circumstantial evidence to be sure that there are no co-existing circumstances which could weaken or destroy the inference.”

27. I am persuaded that the chain of circumstantial evidence leads to no other hypothesis other than the guilt of the accused. There was evidence that he was the only person living within the compound at the material time. I find the doctrine of recent possession is applicable here.

28. In *Gideon Meitekin Koyiet –vs- Republic* Criminal Appeal No. 297 of 2012 [2013] eKLR, the Court of Appeal stated that the doctrine of recent possession is applicable where the trial court is satisfied that the prosecution has proved the following

- a. that the property was found with the suspect;
- b. that the property was positively identified by the complainant;
- c. that the property was recently stolen from the complainant.

29. In this case, the Complainant and her husband properly identified the goat skin and the head as belonging to her missing goat. PW3 who used to graze it was also certain it was the one. The said goat skin was recovered within the Accused’s compound without doubt. The Accused also opened the store and showed the goat head inside the house beyond reasonable doubt. All this happened within a day of the goat disappearing.

30. I therefore find that the Accused must have been the thief beyond reasonable doubt. His claim that there were two goat heads is also unconvincing going by the clear photos shown to Court. There was no grudge between him and the complainants or the Investigating officer to warrant a false accusation. I find his defence to be a sham.

31. In my view, the Prosecution proved the charge against the accused person beyond reasonable doubt. I reject his defence

Reasons wherefore, I find him guilty of the offence charged c/s 278 of the *Penal Code*. I do hereby convict him of the said offence.

Right of Appeal – 14 days.

Orders accordingly.

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HON. A.M. OBURA (MRS), CM

State Counsel

C/Assistant:

.Accused:

CT : Judgment delivered in open court at Voi this ...6th day of December 2023

