



IN THE COURT OF APPEAL

AT ELDORET

CORAM: TUNOI, O'KUBASU & DEVERELL, JJ.A.

CRIMINAL APPEAL NO. 190 OF 2005

BETWEEN

JOHN WANYONYI ANDREA APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a judgment of the High Court of Kenya at Kitale (Hon. Lady Justice W. Karanja) dated 26th April, 2005

In

KITALE HC.CR.A. NO. 189 OF 2002)

JUDGMENT OF THE COURT

JOHN WANYONYI ANDREA, the appellant herein, was after trial convicted on four counts of stealing stock contrary to **section 278** of the Penal Code and sentenced to seven (7) years imprisonment on each count, the sentences being ordered to run concurrently. His appeal to the High Court of Kenya at Kitale (W. Karanja J) was dismissed on 26th April, 2005, and hence, this is a second and final appeal.

The evidence presented to the trial court by the prosecution is indeed brief. The complainants, who reside in Trans-Nzoia and Bungoma Districts, lost their cows on diverse dates between October, 1998 and June, 1999. They reported the losses to their respective Chiefs and the Police. One of the cows was recovered from the homestead of the appellant and the others were recovered from the homes of his co-accused after the appellant had directed the police to their homes. It is on record that the appellant's co-accused were acquitted after a joint trial by the Senior Resident Magistrate at Kitale.

The Veterinary Officer, Fredrick Wanjala (PW4) testified that four permits to move cattle had been given on various dates in the names of the appellant. In each case it authorised the appellant to move one head of cattle from Kimilili town to Bungoma by road on hoof. The cattle were allegedly for breeding

purposes and/or for sale.

In his defence the appellant denied having stolen the cattle in question. He testified that he did not even know why the permits were in his names.

In convicting the appellant the trial Court held:-

“For accused 1 there is clear evidence that he is the one who sold the heads of cattle. Accused also gave out these permits in his name and Identity Card. It is not true (sic) that was filled later as some of the permits were found with the other accused person which he had sold the cows earlier. I find nothing in his defence. He committed the offence and find a case has been proved against accused 1.”

The superior court after duly re-evaluating the evidence found that:-

“(The appellant) had sold the cows to different accused persons soon after they were stolen. In the last case, he was seen with the cow the following morning after it had been stolen. The evidence adduced against the appellant was overwhelming.”

When this appeal came up for hearing before us on 19th September, 2006, the appellant handed in written submissions. We observe that this is a course he had adopted in canvassing his appeal before the superior court.

We have carefully considered all the issues raised by the appellant in the written submissions. They all relate to the facts of the case in the trial court. But, this being a second appeal, it must be confined to points of law only; and, this Court will not interfere with concurrent findings of fact arrived at in the two courts below unless based on no evidence. The test to be applied on second appeal is whether there was any evidence on which the trial court could find as it did. See *Karingo v. Republic* [1982] KLR 213 and *Reuben Karari s/o Karanja v Republic* (1950) EACA 146.

There were concurrent findings by the two courts below that the four complainants’ head of cattle were traceable to the appellant. He was found in actual possession of one cow and he led the police to the homesteads from where the rest were found. Moreover, the cattle movement permits were all issued in the name of the appellant.

In our view, after having considered the written submissions of the appellant, we are satisfied that the appellant was convicted on very sound evidence. His convictions, in the circumstances, were inevitable and the first appellate court had no reason to disturb them. As far as we are concerned there are no reasons whatsoever, for us to disturb the concurrent findings of the two courts below.

In the result this appeal fails and is hereby dismissed.

Dated and delivered at Eldoret this 22nd day of September, 2006.

P. K. TUNOI

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JUDGE OF APPEAL

E. O. O’KUBASU

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JUDGE OF APPEAL

W. S. DEVERELL

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JUDGE OF APPEAL

I certify that this is a true
copy of the original.

DEPUTY REGISTRAR