

goats but insisted that the deal ought to be consummated at the police station. A bargain was struck in the presence of a Tanzanian police officer and Maromoko offered to pay T.Shs.60,000/= for the five goats. Maromoko then retired to his home. The complainant who had reached there claimed the goats as his. They went to the police station where they found the appellant and oTnhee otghoeart s alwreeraed ys tionl ecnu stiond yK.enya. Within a few hours of the theft five of the goats, which bore the complainant's brand marks on them, were found in the possession of the appellant who was attempting to sell them. The learned District Magistrate was convinced that both the accused persons (appellant being one of them) were in possession of the five goats and quite properly convicted them of the offence of stock theft invoking the doctrine of recent possession. We find no misdirection whatsoever on the part of the learned magistrate.

Equally we find no misdirection on the part of the superior court (Commissioner of Assize, Kassim Shah Esquire). The Commissioner said:

"The evidence shows that theft of goats occurred in the middle of the night; tracks in the morning led towards Maforoni; bare ly seven hours after the theft the Appellant was actively engaged in selling the goats; goats were identified by the brand marks; the arrest of the Appellant and finally but most importantly, the Appellant's defence. The defence is not worthy of belief in face of the overwhelming evidence. He was found with the goats and he either stole them or handled them. His explanation that he was set -up is patently false."

The appellant, who argued his appeal in person, did not really take issue with his conviction. He urged that the sentence of seven years imprisonment with hard labour and strokes was too harsh and called upon the Court to show mercy to him. This Court cannot interfere with the sentence on the issue of severity thereof. This Court can interfere with, inter alia, an illegal sentence. Section 278 of the Penal Code provides that such an offender (for stock theft) is liable to imprisonment for a period not exceeding fourteen years together with corporal punishment. The section does not provide for imposition of hard labour. The sentence, therefore, as meted out to the appellant, insofar as the hard labour is concerned is illegal and that portion of the sentence is ordered to be set aside.

This appeal is otherwise dismissed.

Dated and delivered at Mombasa this 19th day of January, 2000.

A. M. AKIWUMI

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR