

TANZANIA / JUDGMENT

19760423 TZHC Arusha

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TZHCDECIDED
23 April 1976

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/A IN THE HIGH COURT QF TANZANIA ri AT ARUSHA APPELLhTE JURISDICTION HIGH. COURT CRINIHAL APPEIL NO. 92 OF 1974 ORIGINAL CRIMINAL CASE NO. 89 OF 1973 OF THE DISTRICT COLTLT OF Mi.SAI DISTRICT AT MOITDULI BEFORE: C. 7. ITaHMUL, Esq. District Magistrate KIROYANI LOSJA . . FELITT (Original Accused). versus THE REPUBLIC , . . . o a o a . a . a RESPONDENT (Original Prosecutor) JUDCRJENT JONATHAN, J. Theappellant and another who does not app.er toJave appealed were convicted"jointly of caTbtlt theft, c/ss.. 268 and 265 of the Penal Code. They were each even the minimuin senbence. It would appear that on the. relevant night .15 head of cattle were stolen from the cattle boma of the complainant (P.i.i). Of these 12. head. of cattle belonged, to, him while the rest were owned bi one Moita (P.W.6) who had entrusted them to P.W.1. The theft was reported to the police and two or thro weeks latè' a 'police party comprising P01 5102 and P.W.3, among others, apparently looking' for cattle rustlers spotted the two accused driving a herd of cattle They followed them and arrested the appellant. The other accused ran away but upon a chase being made he was caught and also arrested.. The cattle eight in'.number'had marks freshly made on them by, burning and the wcund were still bleeding. Accord.ind to P.W.2 and PW.3 the apc±lafit Upon being asied said he had found the animals on the farm or estate of one Anderson and he had then driven tho -cli away ostensibly as str,y animals. He admitted having 'branded them to make them his prOperty. The other accused on the other hand told the witnesses he was on a trip to make Hoshi" when he was arrested and he had had nothing to do either with the appellant or the cattle. The police arrested both accused and seized the cattle. They stayed overnight in th cattle bona of, one Leluxigei (P.W.8), a cell leader,, where the cattle mixed with his own herd. There, the hrdbOy of P.W.1 (P.W.4) and Pl's son, who did not testif, in turn, without any mistake piCked the eight animals out of the entire herd as some of the cattle of P.W.1 which were stolen on the material nigit. That was in the 'resOnce' of P.W.2, P.W3 and PaW,8. , The evidence of the herd.sboy (P.W.4 supports that of the police officers when he said that the apella.t told them he had found the cattle at Rasharasha, presimably the farm ref erre" .o by P0W.2 and P.W.3. . . ' 69 -2- It is convenient to add here that the evidence of the other accused also shoWs the appellant as having stated so to the •police. Crucially in dispute is wiaethef thq cattle were among those stolen from the shed Of P.W.1. According to him some of his cattle hadbci branded' fl.K," but none of these was found. The others. had not been so inariedasyet, but each of them had cuts.on.theright ear such that a strip of the ear was lelu hanging like the pendulum of a clock The three bulls of p.W.6 also had cuts on the ears and this witness in his evidenba confirmed they had their ears cutalmost in .the shape of thosof the cattle

of P.W.1, and it would further appear that he had given each of those bulls a name. Both the witnesses in their evidence identified the 8 head of cattle - 5 cows, 1 belonging to P.W.1, and two bulls, belonging to P.W.6 - as being some of the stolen animals, this notwithstanding that the marks had been destroyed and new marks freshly made on them. Both P.W.4 and P.W.8 also identified the cattle to be some of those stolen. The former deposed he had worked as P.W.1's herdsboy for eleven months and he was familiar with his cattle. The latter said he had known P.W.1's cattle for many years and upon the 8 animals being taken to his house he had recognised one of the cows with a white head, as being that of the complainant. The witness would appear to have known the accused persons who, he said, were brothers, being the sons of a man he named. The defence of the other accused was brief, that he was looking for a lost calf when the police apprehended him and that he duly told the police he had not been in the appellant's company and he did not know him. The two witnesses he called testified they had seen the accused looking for his calf. The appellant in his evidence admitted being found in possession of the cattle. He said, however, that they were the cattle of his father who was blind; and that he had just made those marks to show they were his. Despite giving this explanation to the police he was arrested. He denied telling them that he had got them from Rasharesha. In agreement with the evidence of the co-accused he denied also being with him. He, too, called two witnesses, one of whom said that he had seen the appellant with some cattle at the dip and that they had marks. These, however, were old. It is perhaps of some interest that although the accused said 'he' did not know each other, this witness said he had been asked by the brother-in-law of the co-accused to give evidence. The evidence of his other witness was that the relevant cattle were the appellant's and it had been branded with the complainant's mark. The complainant, his herdsboy, P.W.6 as regards his two bulls, and P.W.8 were familiar with the cattle and in my view the learned trial magistrate was entitled to find, as he did, that the 8 animals found in possession of the accused were among the stolen cattle of P.W.1 and P.W.6.

- : -3- The claim of the appellant that the cattle were his could not be true especially having regard to the evidence that he said he had found the cattle at an estate. In his evidence he denied telling the police so but in view of the evidence not only of the police officers but also that of P.W.4 and the co-accused such denial was properly rejected by the lower court. The appellant having been found with about half the number of the stolen cattle only two or three weeks after they were stolen it was reasonable to presume that he was a thief. Accordingly, I am satisfied the conviction was deserved and the appeal is dismissed in its entirety. I note, however, that the accused were wrongly ordered to pay shs.6,000 as compensation. The complainant in his evidence said the stolen cattle were worth shs.06,000, but eight of them having been recovered the compensation should have been for a much lesser sum. Assuming the cattle were - of more or less the same value, I would put the total value of the cattle that were not recovered, at shs.2,800. Accordingly, the order for compensation is replaced with an order requiring each accused to pay shs.1,400 as compensation. (P. M. JONATHAN) J1JDCE. Judgment delivered in open Court at Arusha this 23rd day of April, 1976. V (p. M. JONATHAN) PHJ/MTPN. JUDGE. T:

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