

TANZANIA / JUDGMENT

19710908 TZHC Arusha

COURT
TZHCDECIDED
8 September 1971

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; br4-t -4C,,, i~ IN THE HIG.. COURT OF TANZANIA AT ARUSHA APPSLLATE JURISDICTION CRIV
INAL APPEAL NO % 75 OF 1971 ORIGINAL CRIMINAL CASE NO. •7 OF 1969 OF THE DISTRICT
COUKT OF HANANG' DISTRICT AT BABATI Before L.A.L. Mgonja, Esq., District Magistrate
GIDARAGETI PEALI APPELLANT/ACCUSED versus
THEREPUBLIC RESPONJENT/PROSECUTOR CILRGE: Cattle theft contrary to
section 268 ef tne Penal Code Cap. 16 of the Laws and Minimum Sentence Act. 29/69. J U D O lvi E
N T KWIKIiYIA, AG. J. The complainant's cattle were stolen when his - uaa broken into on the
night of 23rd Decesaber, 1962. He went to report to the Police, after discovering the theft.
Altogether eight heads of cattle were stolen. In December, 1963 one Mohamed Ali was arrested by
the Police after he was fduid in possession of one of the stolen heads of cattle. The cow whih was
found with Mohamed (wilo gave evidence at the trial PW 2) was black. It bore the complainant's
brand "BARAK N T his cow and ". nine others seized from Mohamed were impounded by the
Police in their holding t pan at iTlongero. Some arrests were made but somehow no complaIt
was lodged in court. Ef forts were being rndo at tee same time to cOntact thi appellant who had
been named by Mohamed and other suspects. When the appellant was traced at long last, he was
arraigned 'before the Mbulu District Court on 17/11/69, seven years after the alleged offence was
committed* His trial did not commence till 2.4.7\$ although the prosecution had all that .tme to
prepare their case they continued seeking adjournmehts with the result that the trial was delaed
hopelessly. During all this time, they appellant was remanded in custody. During the trial
Moharned and another witness (Itambu Msangha) told the court that the appellant and two
others gave Mohamed the cow in exchange for two calves. There was no evidence to show that
the cow alleged to have been given to Mohamed was the same as the one identified by the
complainant to be his. The trial court on its part failed to address its mind to this question the
determination of which was crucial to the •pr*se- cu- tion case. T he failure to identify the cow
which the appellant exchanged with M Ohamed was so material as to make the prosecution case
weak. he fact that the prosecution were at the time of the tri1 not in a position to produce the cow
for identification leaves one woner; whether the tase should have been brought in the first place.
The learned magistrate who convicted the appellant did not consider the law sufficiently to
explain why he found the appellant ailty only of receiving the stolencow, and not the actual thief
as he was'charged. He misdirected himself when he said:— , "However, on the strength of the
evidence before me, I am not conviced that the prosecution has successfully proved the offence
of cattle theft against the accused person." and proceeded to find the appellant guilty receiving

the stolen cow. It must be pointed out, with all respect, that the offence of cattle theft as defined in J. . . - r I I . , ... 1 4. I

- 2 - by the Stock Theft Ordinance includes guiltily receiving stolen cattle. So that the distinction which the learned magistrate sought to make was unnecessary if not misconceived. If he was satisfied that the 'prosecution had proved that the appellant was either the actual thief or a guilty receiver, the learned magistrate ought to have found the appellant guilty as charged. The learned magistrate must have fallen into this error because the prosecution case was weak and one would agree with Mm that the prosecution had "not successfully proved the offence of cattle theft." Such being the case there was no justification for holding the appellant guilty. It is particularly disturbing to note that the prosecution took many years to investigate the case. One wonders how the witnesses could remember the evidence after all this time. Delays like this one cause the public to raise angry voices against the law-enforcing authorities. They must for that reason be avoided. If there is insufficient evidence the suspects must be released until such time when evidence will be available. In this case the appellant who was in custody for a long time before being convicted has suffered another period of imprisonment for some months. For the reasons gone into in this judgment, it is clear that he ought not to have been arraigned at all. The evidence against him was weakened when the stolen cow was disposed. The other witnesses in the case were themselves originally suspects. As such they had every reason to tell lies against the appellant. Mohamed Ali brought his brother in law Itambura as his witness. He could not be expected to give evidence against his relative. It would therefore be unsafe to uphold the appellant's conviction and it is hereby quashed. The sentence thereof is set aside. Unless he is held for some other lawful cause, the appellant should be released forthwith. Arusha— 8/9/71 (M . H. A. KiJIKIMA) AG. J1J D G E jsn

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