

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA I; 1 AT MBEYA DC. CRIMINAL APPEAL NO.11 OF 2010
(Originating from the District Court of Mbarali Original Criminal Case No.51/2008) COSTANTINO
S/O MKONGWE APPELLANT VERSUS THE REPUBLIC RESPONDENT

JUDGMENT

22.11.2011 & 23.03.2012. Before: MrniHa, B.M.J. On 1.4.2008, Costantino s/o Mkongwe was charged before the District Court of Mbarali with the offence of cattle theft c/s 268 (1) and (3) read together with section 265 both of the Penal Code Cap.16 of the Laws. He was found guilty, convicted and sentenced to an imprisonment term of 3 years. He felt aggrieved, hence this appeal which is against the whole of that judgment, including the sentence. The appellant is appearing in person and is undefended while the Republic is being represented by Miss Gwaltu, learned state attorney. The facts of the case were briefly that on the morning of 30.3.2008, the complainant one Makresia Pawa wake up to find his kraal broken into by unknown persons. He realized that a herd of cattle was stolen from therein. He 1 41) informed his immediate neighbour after which the two of them started tracking the stolen herd of cattle by following the hoof marks and ended up in Rujewa town. He came to discover that his herd of cattle was sold by the appellant to one Mustapha Ally who was the second accused before the trial court. But then, how was the discovery made possible? On 30.3.2008, there was another scenario at the slaughter house at Rujewa in which the appellant was seen by one Joseph Utama selling a herd of cattle to the said Mustapha Ally. The former (appellant) was required to produce a permit to evidence ownership of the said herd of cattle, but he said he had forgotten it at his home. In the course of tracing his stolen herd of cattle, the complainant met the said Joseph Utama. He offered detailed identification information of how his stolen herd of cattle looked like, its colour and the special mark it had. Joseph Utama advised him to \Tisjt the six persons who had on that day slaughtered cows. The complainant did so, and ultimately came to a place of the said Mustapha Ally who told him that he bought a herd of cattle befitting that description from a person he did not know. It was then that the "unknown" person who happened to be the appellant was traced and apprehended. He attempted to escape, but was re-apprehended. Upon that the two of them were, as aforesaid, charged before the said court. While the appellant was charged of cattle theft as already pointed out, the said Mustapha Ally was charged with and convicted of receiving stolen property. The latter has not appealed. I hasten to say that although there was no eye witness who saw the appellant breaking into the complainant's kraal, I agree with Miss Gwaltu that the

evidence on which conviction was anchored was very strong. First and foremost, the description of the herd of cattle which was given by the 2⁴) Complainant that it was a female herd of cattle, black in colour with white spots on the stomach also that it had No.110 on the right leg as a special mark was corroborated by the evidence of PW2 the said Joseph Utama, a duty veterinary officer at the slaughter house on the day in issue. PW2 said that in the course of inspection, he realized that the second accused before the trial court had no permit to evidence legal ownership of the said herd of cattle, but that the latter told him that the person who had sold it to him was there. That person was indeed there, He was none other than the appellant who introduced himself to PW2 as Joseph Mpanga of Muungano Village. The appellant told him that he had forgotten the permit at his home as he was in a hurry to take the said herd of cattle to the slaughter house. He confirmed therefore that he was the one who sold the said herd of cattle to the second accused before the trial court. The evidence of PW1 that the appellant was the culprit was further corroborated by that of DW2 Mustapha Ally who was firm that he bought the said herd of cattle from the appellant whom he met at Ihanga Mferejini. Like PW2, DW2 told the trial court that he had forgotten the permit to evidence lawful ownership of the said herd of cattle at his home, upon which he successfully asked him to accompany him to the slaughter house at which they presented themselves to P'W2 on account that DW2 would be prevented from slaughtering that herd of cattle in the absence of the said permit. The evidence of these three persons was, as aforesaid strong, therefore rightly believed by the trial court that the appellant was the one who sold the said herd of cattle to DW2. It is true that the appellant was not seen by anyone breaking into the kraal from which the said herd of cattle was stolen Although the trial court 3 11) magistrate did not invoke the doctrine of recent possession, it is a fact that because the said herd of cattle was stolen on the night of 29.3.2008, and was sold by the appellant to DW2 on the same day, it is proper to infer that the appellant was indeed the thief. Thus, he was properly convicted. This ground is baseless. In the second ground of appeal, the appellant is accusing the trial court for relying on the evidence of his co-accused. I agree with Miss Gwaltu that that ground too is baseless on account that the evidence D'W2 was corroborated by that of PW2 as I have already adequately illustrated. It is also appellant's complaint that more witnesses ought to have been called to testify. Like the first two grounds, this ground is not properly grounded because it is not a legal requirement. This is in terms of section 143 of the Evidence Act Cap. 6 of the Revised Edition, 2002 which provides that subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact. Last but not least is the complaint that his defence was not considered by the trial court. I hasten to say that this ground too lacks merit. As the judgment of the trial court shows, his defence was considered but rejected on the strength of the prosecution evidence. On page 11, first paragraph from the top of the typed judgment of the trial court, the trial magistrate said:- "There is no dispute that the cow was the property of PW1 Makresia Pawa. There is enough evidence that the P accused (appellant) sold the cow to 2uid accused as it has been supported by 4 ' PW2 Joseph Mtama (sic: Joseph Utan a) and the 2IId accused Mustapha Ally.... This is indicative that the appellant's defence was rejected on sound reasons which were assigned. Thus, that court properly found that the prosecution had proved their case against the appellant beyond reasonable doubts. Riwo icks merits and is hereby disirmissed In COCIU Sgd U il Minilla, B

M Judge 23.3.2012 1 hereby certify this to be a true copy of the original. District Registrar
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