

TANZANIA / JUDGMENT

ephraim raphael vs republic

2008 tzhc 176 29 august 2008

COURT
TZHCDECIDED
29 August 2008

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IN THE HIGH COURT OF TANZANIA AT TANGA CRIMINAL APPEAL NO.5 OF 2005 (Originating from Pangani D/C Cr.Case 35/2004) EPHRAIM RAPHAEL..... APPLICANT VERSUS THE REPUBLIC..... RESPONDENT 17/6/07 & 29/8/08

JUDGEMENT

Shayo, J. The appellant, namely, Ephraim Raphael, was charged and convicted of cattle theft c/s 268 of the Penal Code. He was sentenced to 15 years imprisonment. Aggrieved by the sentence he now appeals to this court. The facts of the case can be narrated briefly as follows. On 8/4/2004 at about 6.00pm. PW.1 Limbukundi s/o Yeku was informed by his headsman that his sheep had been stolen in the grazing field. Reports were taken to the village security chairman PW.3 Zubeda Amiri and efforts to trace the stolen sheep started. It was then reported by one Mzee Ngongoni that the appellant was seen selling meat. The appellant was arrested and when questioned by the village authorities, he admitted before PW.1, PW.2 Luvocarit Shuma. PW.3, PW.4 Naima d/o Lameck, to have committed the crime and even took them to where he had slaughtered the stolen sheep in a bush where the skin and four legs were found. PW.1 identified the skin to be that of his stolen sheep. The appellant was then taken to police station where PW.5 D/Sgt Isack recorded his cautioned statement in which he admitted to have stolen the sheep and slaughtered the same for meat. The appellant was finally charged. In his defence he denied to have committed the offence claiming that he was forced and threatened to carry the skin, and that he was not in good terms with PW.2. In his petition of appeal his gravamen of complaint is that the sentence was manifestly excessive. He never challenged his conviction. The learned State Attorney Ms. Makondo, supported the appellant's conviction but not the sentence. She argued that the sentence of 15 years imposed by the trial court was illegal. That under the law the penalty for the offence of cattle theft is a maximum of 15 years jail. It was her stance that the trial court erred in imposing the illegal sentence of 15 years purportedly that it was a scheduled offence under the Minimum Sentences Act, 1972. Under section 5 (b) of the Minimum Sentences Act Cap.90 R.E.2002, she said, the penalty for the offence of cattle theft is not less than 5 years imprisonment. The learned State Attorney thus urged this court to exercise its revisional powers under section 366(1)(b) of the Criminal Procedure Act, Cap.20 R.E.2002 to rectify the sentence. I fully agree with the learned State Attorney that the sentence of 15 years imposed by the trial court

was not only manifestly excessive but it was illegal. The offence of cattle theft is a scheduled one under the Minimum Sentences Act, Cap.90 R.E. 2002. The minimum penalty provided under section 5(b) of that Act is a sentence of not less than 5 years jail. The trial court obviously erred in imposing the illegal sentence of 15 years imprisonment, which was against the law. In the upshot and for the foregoing reasons, I allow the appeal against sentence. The sentence of 15 years is set aside and is substituted therefore a sentence of 5 years jail which is the statutory minimum. It is so ordered. A.A.I*ⁱ;i oriM iu> J. w 4/8 2008 2 29/8/2008 CORAM - W.E. LEMA - DR. APPELALNT - Present RESPONDENT - M/S Lamwai (SA) C/C SARAH Court:- Judgement delivered in chamber this 29th day of August, 2008 in the presence of both parties. Right of Appeal further explained to parties. W.E. LeWa -D R . L! 29/8/2008 \ ^ •./ Y> C\ \- o 3

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Prepared on 13 October 2026 · Esheria