

TANZANIA / JUDGMENT

john bosco ngonyani vs republic

2007 tzhc 353 5 november 2007

COURT
TZHCDECIDED
5 November 2007

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IN THE HIGH COURT OF TANZANIA
AT SONGEA
CRIMINAL APPEAL NO. 10 OF 2006
(ORIGINAL SONGEA D/C CR.APP. NO. 45/2005
NAMABENGO PR/C. C.NO. 35 OF 2005)
JOHN BOSCO NGONYANI.....APPELLANT

VERSUS: THE REPUBLIC RESPONDENT
HEARING CONCLUDED - 28/10/2007
JUDGMENT DELIVERED - 5/11/2007

JUDGMENT

KAGANDA, J. This is a second appeal, the matter originate from Namabengo Primary Court. The appellant was charged of a scheduled offence that is Cattle theft which is covered under the minimum sentences Act, 1972. He was convicted on his own plea of guilty to the charge, thereafter facts were advanced by the complainant clearly and the appellant admitted to there correctness. The District Court dismissed his appeal under section 20 (2) (a) of the Magistrates Courts Act, 1984. The appellant has advanced two grounds of appeal namely that; He was not found with the stolen goods and second that his plea was unequivocal. The learned Resident Magistrate correctly pointed out on dismissing the appeal that, “the appellants plea of guilty was unequivocal” and sentence could not be disturbed because the offence falls under the law of Minimum sentences. I have examined the trial courts proceedings to ascertain whether the accused’s allegations are true. For purposes certainiy I have reproduced part of it as follows:-
Shitaka:- Wizi wa mifugo K/F 268 na 265ya Kanuniya Adhabu Sura ya 16. Section 268 provide as follows: “Any person who steals anything capable o f being stolen is guilty o f theft, and is liable, unless owing to the circumstances o f the theft or the nature o f the thing stolen, some other punishment is provided..... ” In the case at hand punishment for cattle theft is provided under section 268

- (1) which states “If the thing stolen is any of the animals to which this section applies the offender shall be liable to imprisonment for fifteen years.” The list of animals applicable to that law is shown under subsection (3) as follows:- “This section applies to a horse, mare gelding, ass mule, camel, ostrich bull, cow, ox, ewe, whether goat or pig.” It is therefore clear that the goat falls within the law as such the charge was correct against the appellant. When the charge was read over and explained to the appellant his answer or response was:- “Ndiyo nilimch ukua” He did not therefore say “ndiyo nilimuiba.” The two statements are different, the latter is obvious to the charge. Later the complainant stated in support to the charge that:- “Mnamo tarehe 20/3/2005 asubuhi niliwafungia mbuzi wangu kimarisho, majiraya saa 5,00 asubuhi alinijia mtoto nakunieleza mbuzi umemuuza? mimi nikajibu mbona nimewafungia nyuma. Akanieleza mbona John Bosco Amembeba mbuzi anaelekea naye Luegu. Hapo mimi pamoja na Mgambo tukamfukuza Mshitakiwa na tulimkuta na mbuzi. Tulimuuliza unampeleka wapiy naye hakujibu. Hapo tulimkamata nakurudisha nyumbani na kumpeleka ofisinipamoja na mbuzi dume mweusi, ametolewa mbeleya Mahakama hii na kuwa kielelezo A.” Mshitakiwa:- “Maelezo ya Mlalamikaji nayakubali.” It is important at this juncture to get the definition of stealing or theft provided under section 258 (1) of the Penal Code. That section provides:- “A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, steals that things.” Further section 287 (1) (3) provides that:-
- (1) Every inanimate thing which is the property of any person and which is movable, is capable of being stolen And (3) Every tame animal whether tame by nature or wild by nature that is tame, which is the property of any person, is capable of being stolen.” In the case at hand, the appellant was seen carrying the goat by a child, I believe the case were to be heard on merit he would have been summoned as a witness for the prosecution. On that information the owner of the goat made a follow up and found the appellant carrying the goat that is he was indeed found in actual possession. Now that, he took it without the knowledge nor consent of its owner, he was asked where he was sending it but he had no answer nor explanation. Wisdom and law speaks loud in support of the laws cited herein this judgment. Since the goat was not his property nor did he raise any claim of right then the only answer is that, he was stealing it that is why he answered in simple language that:- “ndiyo nilimchukua.” And to the facts in support of the charge he answered:- “Maelezo ya Mlalamikaji nayakubali.” Such answers can not in any way be said to be unequivocal. I totally agree with Mr. Manjoti the learned State Attorney on that, the appellant has just advanced an after thought argument before this court because he did not raise it before the trial court. It calls without doubt that the two grounds of appeal raised by the appellant have no merit at all. The district court was very right on its decision made under section 20
- (2) (a) of the Magistrates Courts Act. No. 2 of 1984. That Law provide for powers to the District Court on Appeals and Revision for cases originating from Primary Courts. That Law states 20 (2) “No appeal shall be allowed:-

- (a) In any case of an accused person convicted on his own plea of guilty, except against sentence or an order for the payment of compensation. ” The appellants appeal against the sentence can not be allowed because the offence falls under the scheduled offence. In the event the appeal is dismissed in its totality. S.S. KAGANDA, JUDGE. 28/10/2007 Order: Right of appeal explained. S.S. KAGANDA, JUDGE. 5/11/2007 SSK/ESY.
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