

TANZANIA / JUDGMENT

20010423 TZHC Mtwara1

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IN THE HIGH COURT OF TANZANIA IT 1, Mtwara - L 11Jt. & PEILTE JURISDICTION CRIMINAL APPEAL NO. 48 OF 2000 ORIGINAL CRIMINAL CASE NO. 339 OF 1999 OF THE DISTRICT COURT OF NTWARI AT MT41-IRL% BEFORE: P.M. MABULA, ES. DISTRICT MAGISTRATE SAIDI HAMISI @ LIUC[.... APPELLANT, versus: THE REPUBLIC OF TANZANIA, ..RESPONDENT.

- JUDGMENT The appellant IUMSI LI= was charged with cattle theft c/s 268(1) of the Penal Code Cap 16, He denied the charge. However at the end of the day he was found guilty as charged and was convicted accordingl7., He was sentenced to 5 years imprisonment9 He is appealing against conviction and sentence. ii~t the trial the prosecution had adduced evidence to the effect that 9 in the morning of 20.9.99 PW1 DiHSALUNU, died his 4 goats near his home for grazing0 When he went there to collect them for home he found one missing. It was. ..black in colour. On that very day while I'L-1SISA NI S.ISMIIL, a militiaman, was at the playing ground., he saw the appellant carrying a mzigo (load). He suspected to be something unusual. He stopped him and asked him as to what he was carrying. It turned out to be goat meat and a skin0 When asked as to from where he had got that meat he said he had been given by PW3 HiP4IL_MUSELCNGELR. PW14- Hassen was not satisfied. He took him with the meat and skin to Mikindani Police station and handed him over and his loot to PW2 No.,.16291CHISIo When PW3 Pelengele was asked about it he denied to have given the appellant any meat, Later that day PW1 Abdallah got the wind, He went to • Mikindani Police Station where he identified the skin to be the very one of his goat which had been stolen on that day.
- 2 - The appellant was charged with stealing that goat0 In his de±'enOe he denied to have been found in possession of any goat meat and skin0 He said he was found with his two bags only which none contained any meat. The trial court found the prosecution to have proved the guilt of the appellant beyond all colours of doubt0 The appellant was convicted and sentenced to 5 years imprisonment, apparently under the Minimum Sentences Act, 1972. He was aggrieved. Hence this appeal In his memorandum of appeal he said there was no expert evidence that the meat was goat meat and the skin was that of a goat. He also said, since he was alldE3ed to have stolen a .goat the exhibit should be the alleged stolen goat and not meat or skin. In clarifying his grounds of appeal he said he was found with dry pieces of meat of an animal called Mbawala and that he had got that meat from ff3 Esmisi Musa Pelengele. 'Ir rply the learned State attorney who had represented the Republic at the hearing

of this appeal Mr. Mtinangi supported the conviction and sentence on the ground that the prosecution had proved the appellant's guilt beyond all reasonable doubt, and that the appellant was just trying to evade justice by concocting baseless allegations.

- I have carefully considered the : appellant's grounds of appeal and the reply thereto by the learned State attorney. I have also considered carefully the evidence on record. This appeal is absolutely without merits. The appellant was found in possession of goat meat and goat skin PW1 Jthdailah identified the skin to be of his goat which had been stolen on that very same day. The appellant alleged he had been given by PW3 Pelengele. Pelengele denied to have given him any meat or goat, and that he had never seen him for ten years. Therefore the appellant cannot escape the orbit of the Doctrine of Recent Possession. The period of only a couple of hours is too short to assume that he had received the same from a third party. He was the one who had stolen that goat. His allegation before this Court that there was no expert evidence has no merits. People know goat skins and there is no necessity of calling an expert to tell whether it is a goat skin. At any rate, if the appellant was doubtful about it, he would have said so at his trial whereby the trial Court would have called an expert. So his allegation before this Court that he was found with three dried pieces of mbawala which he had got from PW3 Pelengele has no merits. Pelengele himself denied to have given him any meat, and that he had never seen him for the past ten years. He also didn't mention this at the trial. It is just an afterthought which has no merits. The appellant was 28 years old at the material time. The sentence of 5 years imprisonment is the minimum for that offence. This appeal has been lodged without sufficient grounds. It is hereby dismissed in its entirety. /1 S. IL, KAJI JUDGE
23. 4. 2001 Court: Judgment has been delivered in the presence of the appellant in person and Mr. Mtinangi learned State attorney for the Republic this 23rd day of April, - S - K. AJI JUDGE
- -- 23.4.2001 B/C: Mr. Ladda R/.

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