

UGANDA / JUDGMENT

Rex v Sururei (Con. C. 734/1932.)

[1932] EACA 12 (1 January 1932)

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COURT

East African Court of Appeal

BEFORE

Barth CJ, Gamble. Ag. J. (Kenya), Thomas, J.
(Kenya)

CASE / FILE NUMBER

Con. C. 734/1932.

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CRIMINAL CONFIRMATION.

Before SIR JACOB BARTH, \$C. J., \$ THOMAS, J. and GAMBLE. Acting J.

 $\rm REX$ **$\boldsymbol{v}$** .**KIPKOECH ARAP SURUREI.****Con. C. 734/1932.**

- Stock and Produce Theft (Amendment) Ordinance, 1928, section 4-Possession of stolen stock-Physical or constructive possession.
- *Held* \$(30-1-33)\$:—That the expression "found in the possession" of
the accused must be construed as found in his actual physical
possession and does not include stock which may be in his constructive possession or control.
- Held further: That the provisions of the Ordinance do not rest on the presumption arising from recent possession.

Doran, Crown Counsel, for Crown.

Doran submitted that the wife of Arap Silgich, in whose boma the stock had been left, saw accused in possession of the stock and that accused remained in constructive possession of same. Halsbury, Vol. 9, p. 678.

ORDER.-The accused has been convicted of the theft of one head of stock under section 255 of the Penal Code.

The facts are that the cow was stolen some time in 1929. It was left by the accused with the wife of Arap Silgich with three other head. There was no reason for leaving it with her as her husband was not of accused's clan and the accused had not obtained leave to deposit cattle with her husband. Arap Silgich became suspicious and reported the matter to the authorities. He took the cattle to his Chief, who brought them to the Kapsabet boma. There exhibit 1 was recognized by Kimingeche as his.

We are in entire agreement with the learned trial Magistrate's interpretation of section 4 of the Stock and Produce Theft (Amendment) Ordinance, 1928. It is shortly that anyone found in possession of stock or who has stock on his premises in circumstances which may reasonably lead to the belief that such stock has been stolen is deemed to have stolen such stock, the onus being cast on him to prove that such possession was lawful.

In our opinion the time between the theft and the discovery of the possession is immaterial and the provisions of the Ordinance do not rest on the presumption arising from recent possession. The onus is clearly laid on the accused in the circumstances set out in the section.

The question arises in this case whether or not section 4 of the 1928 Amendment applies, as the cow was not found in the physical possession of the accused or on his premises.

We are of opinion that the expression "found in the possession" of the accused must be construed as found in his actual physical possession, and does not include stock which may be in his constructive possession or control (Queen v. Dennis \$(1894)\$, 2 Q. B. at 478).

Apart from the Ordinance there is no evidence to show that he stole the stock or had received it with the knowledge that it was stolen.

The conviction and sentence are accordingly reversed and the accused is discharged.

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