

IN THE HIGH COURT OF TANZANIA

AA MWANZA

APPELLATE JURISDICTION

HIGH COURT CRIMINAL APPEAL NO. 86 OF 2000

(Original Criminal Case No. 813 of 1998 of the District Court of Musoma District at Musoma Before: MAYAYA Esq., District Magistrate)

STEPHEN WAMBURA @ PIUS ..... APPELLANT  
(Original Accused)

Versus

THE UNITED REPUBLIC ..... RESPONDENT  
(Original Prosecutor)

JUDGMENT

NCHALLA, J.

The appellant one Stephen s/o Wambura @ Pius was charged at Musoma District Court with cattle theft c/ss 265 and 268 of the Penal Code. He was convicted and sentenced to 7 years imprisonment. He is appealing against conviction and sentence. He did not wish to be present at the hearing of his appeal, so I heard the appeal in his absence, but duly considered his grounds of appeal.

On the other hand Mr. Karungura, learned State Attorney, did not support the conviction and the sentence. He submitted that the prosecution case which is wholly based on circumstantial evidence, was not proved beyond reasonable doubt. The circumstances on the prosecution case are not established, the same do not irresistibly point to appellant's guilt. Those circumstances are the following:- That four cows belonging to Baja s/o Moris (P.W.1) were stolen by an unidentified person on 21/11/98. Even the exact time those cows were stolen on that date is not ascertained.

...../2.

On the following day on 22/11/98 P.W.1 and his fellow villagers set out tracking those cows. They followed the hoof marks of those cows and foot prints of the person whom they suspected to have stolen and led those cows away. P.W.1 and his fellow villagers came to the shamba of the appellant where the hoof marks led, and so too the foot prints. They found the appellant in his shamba, and also they saw one of the stolen cows tied on the tree in the bush close to the appellant's shamba. They arrested the appellant and went to search his house. They found three (3) kilos of fresh cow meat in appellant's house. They suspected that meat to be the meat of one of the stolen cows. But the appellant explained that he had bought that meat for his expected guests. It is on this circumstantial evidence that the trial subordinate court convicted the appellant with the theft of P.W.1's cows.

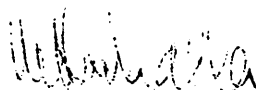
Mr. Karungura argued that none of the prosecution witnesses stated that he was present when the appellant was found and arrested by P.W.1. They all stated that they found the appellant had been arrested by P.W.1. If P.W.1 was accompanied by his fellow villagers when they were tracking the stolen cows, then those villagers would have been present when the appellant was found, and they would have participated in arresting him. Again, P.W.1 said he was in the company of his father and elder brother when he went out to trace his stolen cows. But none of those two persons testified in the case. Why?

The alleged circumstances that hoof marks of cows were seen leading into appellant's shamba, and that one of the stolen cows was found tied on a tree in the bush near appellant's shamba, are not cogent enough as to be incapable of any other interpretation other than the involvement of the appellant in the commission of the cattle theft in this case.

...../3.

I quite agree with Mr. Karungura that, indeed, the circumstantial evidence upon which the conviction of the appellant was based, is not such which irresistibly points to nothing else but to appellant's guilt. In my view those circumstances merely give rise to a strong suspicion that the appellant might have been the offender in this case. But suspicion per se however strong the same can be, cannot be the basis of conviction in a criminal charge. Consequently, I too, find that this appeal has merit, the same is hereby allowed. I quash the conviction and set aside the sentence. I order the immediate release of the appellant from prison, unless further detained for another lawful cause. Order accordingly.

Appeal allowed.



M. D. NCHALLA

JUDGE

1/10/2001

5/10/2001

Coram: M.D. Nchalla, J.

For Appellant: Absent, does not wish to be present

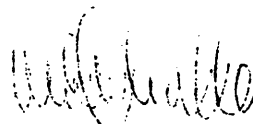
For Respondent/Republic: Mr. Mgengeli, S/I.

C.C: Mrs Hamza

Court: Judgment delivered in court at Mwanza, in the presence of the learned State Attorney Mr. Mgengeli, and in the absence of the appellant who did not wish to be present. This the 5th day of October, 2001. Right of appeal explained.

AT MWANZA

5/10/2001



M. D. NCHALLA

JUDGE