

IN THE HIGH COURT OF TANZANIA  
AT IRINGA

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(DC) CRIMINAL APPEAL NO. 23 OF 2012  
(Originating from Criminal Case No. 226 of 2010  
of the District Court of Iringa District  
at Iringa

Before G. N. Barthy – R.M.)

DEVID MSIGALA } ..... APPELLANTS  
AMANI SANGA }

VERSUS

THE REPUBLIC..... RESPONDENT

(Date of last Order 31.7.2012  
Date of Judgement 30.8.2013)

**JUDGEMENT**

MADAM SHANGALI, J.

In this appeal, Devid Msigala and Amani Sanga, who are the first and second appellants respectively, were stood charged with an offence of cattle theft c/s 268 of the Penal Code, Cap 16 R.E. 2002 in Criminal Case No. 226 of 2010 of the District Court of Iringa. They were both convicted and sentenced to 5 years imprisonment and upon completion of their jail term to compensate the complainant his cow or

money worth one cow that was not discovered.

According to the charge sheet the particulars of the offence were as follows:-

*On 31<sup>st</sup> day of May, 2010, at about 01:00 hrs at Igingilanyi Village in the Iringa Rural District and Region of Iringa, David Msigala and Amani Sanga, jointly and together, did steal six head of cow valued at Tshs. 2,600,000/= the property of one Castory s/o Nongele.*

In a nutshell, the prosecution case was to the effect that, PW.1 Castory Mongele, on the night of 31<sup>st</sup> May, 2010, upon his wake up, he discovered the disappearance of his six cows. Upon making thorough follow-ups, PW.1 together with his neighbors, PW.2 inclusive, managed to find his five cows tied up in the forest. They then find Devid Msigala, the first appellant, selling meat at the second appellant's butcher. Upon asking him about the whereabouts of the skin, the first appellant replied that "ametupa". Upon asked by the police, the first appellant went on to show where they used to keep the skin but the skin of the alleged stolen cow was not found. Later, the appellant showed them the place where they used to graze their cattle which happened to be the same place where they had found the other five stolen cattle. The second

appellant was joined in this case as the owner of the said butcher.

In convicting the appellants the trial magistrate's findings were founded on four prosecution witnesses, these were Castory Mongere PW.1, Kapela Mwisaka PW.2, D 1602 SGT Amando PW.3 and No. F 171788 D/C Hamadi PW.4. The trial Magistrate in reaching at her final decision, she was convinced that the prosecution proved its case beyond reasonable doubts; that it was the appellants who stole the complainant's (PW.1) cattle on the 31<sup>st</sup> day of May, 2010. The appellants' failure to show the skin of the cow meat they were selling at their butcher, contradictions in their testimonies and the appellants' failure to prove his defence of "alibi" proves the appellants' involvement in stealing the complainant's cattle following the evidence adduced by the prosecution.

Convinced of their innocence, the appellants filed the instant appeal. Before this court the appellants appeared in person and unrepresented and preferred 8 grounds of appeal for the first appellant and 6 grounds of appeal for the second appellant. The respondent/Republic was represented by Mr. Mwita, learned State Attorney. All grounds of appeal raised by the appellants may be summarized to only one major point. That the evidence on record did not establish the prosecution case against the appellants beyond reasonable doubt; however in going through this very concern, the following grounds were

argued during the hearing:-

1. That the trial Court erred in convicting the appellants on the basis of suspicions and circumstantial evidence which were not strong to prove the prosecution case.
2. That the trial court erred in law in admitting Exhibit P.1.
3. That the trial court erred in law in relying on evidence of PW.3 and PW.4 as well as the Exhibit P.3 (inventory) in convicting the appellants while they were not listed in preliminary hearing.
4. That the trial court did not consider the defence evidence.

As the appellants were addressed by the court on how they could proceed with their appeal, they chose first to hear what the learned State Attorney had prepared for the appeal before giving an elaboration of their grounds of appeal.

In his ample submission Mr. Mwita learned State Attorney opted to support the appeal and asked this court to quash and set aside the conviction and sentence against the appellants. As a result the appellants had nothing else to add but to thank the position of the learned State Attorney. In short the learned State Attorney conceded with the appellants

ground of appeal while elaborating and extenuating the whole case.

To start with, Mr. Mwita learned State Attorney contended that the conviction of the appellants was based on weak circumstantial evidence and suspicion. This is due to the fact that the appellants were not seen nor identified as the culprits who stole the cattle. PW.1 and PW.2 discovered 5 head of cattle in the forest. They proceeded with their investigation and found the first appellant selling meat in the butcher of the second appellant. It was the only butcher selling meat on that date. PW.1 and PW.2 suspected that the first appellant was selling meat of the stolen cow. They started inquiring about the skin. Since the skin was not discovered the appellant was arrested and connected with the offence.

Later on the second appellant was arrested and equally connected with the offence. The prosecution case was very weak. Even the defence evidence was not considered. There was no direct evidence to connect the appellants with the offence. In the case of **Ally Bakari and Pili Bakari Vs. Republic** (1992) TLR 10 the Court of Appeal gave a proper narration on the issue of circumstantial evidence.

For easy of reference let me quote what the Court of Appeal had to say in **Ally Bakari and Pili Bakari's Case** (supra)