

IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC.CRIMINAL APPEAL NO. 16 OF 2017

(Originating from D/Court of Arumeru, Criminal Appeal No. 7/2016)

LAISA BENETI..... APPELLANT

VERSUS

SELEMANI SAID.....RESPONDENT

JUDGMENT

DR. M. OPIYO, J.

The appellant named above was charged before Nduruma Primary Court with the offence of theft contrary to section 265 and 268 of the Penal Code, Cap. 16 R.E 2002, convicted and sentenced to serve 5 years in jail. He unsuccessfully appealed before the District Court hence this appeal basing on the following grounds;

1. That, the first appellate Court erred both in law and in fact when it upheld the decision of the lower trial court while the prosecution did not prove their case against the appellant beyond reasonable doubt.

2. That, the first appellate court erred in law and in fact when it failed its legal duty to scrutinize the evidence on record as a result it relied on speculative ideas which influenced its judgment
3. That the first appellate court erred in law and in fact in that it did not take into account the appellant's defence

Before this court, both the appellant and the respondent appeared in person and unrepresented. Arguing the appeal, the appellant submitted that the complainant failed to prove ownership of the items that he was charged to have stolen. He failed to explain to court the marks in those goats and also failed to bring the alleged goats as exhibit. He further stated that, the complainant testified that he was told that he was involved in the incident but he did not see him. He went further stating that, the person who testified as PW1 also had a hearsay evidence as he testified that he was told that he stole. He contended that, also the chairman of the hamlet in question who claimed that the goats were at his place, never brought the goats in court. He stated that, the trial court did not receive any testimony of a person who said he saw him with the said goats. He therefore stated that, both courts did not treat him fairly and did not examine the evidence thoroughly. Thus, prayed this appeal be allowed.

Opposing the appeal, the respondent submitted that the appellant was arrested with goats ready handed as he was taking them to the unknown destination and he was among those who arrested him. He contended that, they took the appellant to police station with the said goats but they found the station closed. Then they took him to the chairperson of the hamlet together with goats. They called police who went to help them to take the appellant to police station Chekereni. He further submitted that, the goats were at the home of hamlet chairperson, they were not directed to bring the said goats in court and the appellant never claimed that he needed them being brought in court. He contended that, the court just received the testimony of his witness and believed it to be true. The appellant did not give any plausible defence. Therefore, stated that the trial court was fair in convicting him with the offence charged.

In rejoinder, the appellant stated that the respondent is not telling the truth. He stated that, the respondent said that he was called that his goats were stolen, then how come he came to be among those who supposedly arrested him.

I have gone through the submission of both parties and considered the same. The appellant in this matter was charged and convicted by the trial court for stealing 8 goats alleged to belong to the respondent. But having perused the records of the appeal, it appears that the goats which were alleged to have been stolen by the

appellant from the respondent were not tendered before the trial court as exhibit. Failure to tender the property claimed to have been stolen is very fatal. It is a settled position of the law that, the property alleged to be stolen, must be described fully by the owner. It was stated in the case of **TunduKisunga vs. The Republic, Criminal Appeal No. 117 of 2014, CAT at Mwanza (unreported)** that;

"It is now settled that, a detailed description of the alleged stolen items is necessary in making sure that the case of theft has been proved beyond reasonable doubt"

It was also stated in the case of **David Chacha and 8 Others vs. R**, Criminal Appeal No. 12 of 1997, CAT at Mwanza (unreported) that;

"It is a trite principle of law that properties suspected to have been found in the possession of accused persons should be identified by the complainants conclusively."

But in the instant case, the said goats were not tendered before the trial court as exhibit; hence they were not identified by the respondent who claims to be the owner of the said goats. Based on that, I therefore find that the complainant failed to prove its case against the appellant beyond reasonable doubt. That ground alone, suffices to dispose this appeal and find that the appeal has

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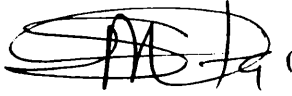
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merit and accordingly allow the same. Therefore, I hereby quash conviction, set aside the sentence and order immediately release of the appellant from custody unless he is otherwise lawfully held.

A handwritten signature in black ink, appearing to read "Dr. M. Opiyo", is written over a horizontal line.

DR. M. OPIYO

JUDGE

22/1/2018