

IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA
DC. CRIMINAL APPEAL NO. 25 OF 2020
(From Original Criminal Case No. 70 of 2016 Kalambo
District Court)

ADAM S/O MBALAMWEZI.....APPELANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

22nd July – 24th August, 2020

MRANGO, J.

This appeal arises from the decision of the Kalambo District Court at Matai (henceforth the trial court). The appellant **Adam s/o Mbalamwezi** along with two others were arraigned in Criminal Case No. 70 of 2016 of offence of stealing animals contrary to **section 268 (1) (3) of the Penal Code, Cap 16 RE 2002**. After full trial, the trial court went on acquitting the second and third accused persons, but it found the first accused person, the appellant guilty of an offence, convicted and sentenced him to serve fourteen (14) years imprisonment.

Aggrieved by the trial court decision, the appellant lodged to this Court five (5) grounds of petition of appeal. However after I read them

between lines, I found basically the appellant's complainant is that the case against him was not proved beyond reasonable doubt.

Briefly, the facts of the case is as follows; that on 3rd day of October 2016 at Mkowe Village within Kalambo District Rukwa Region the appellant along with two others did steal one cow valued at Tshs. 1,000,000/= the property of one Vitus s/o Tenganamba.

The appellant along with two others were arrested and as hinted upon charged before Kalambo District Court. After full trial the 2nd accused person and the 3rd accused person were acquitted while the 1st accused now the appellant was found guilty of the offence, convicted and accordingly sentenced as hinted upon.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented; whereas the respondent republic had the legal service of Mr. Fadhil Mwandoloma – Senior State Attorney.

Arguing in support of the appeal, the appellant had nothing to add rather he prayed for this court to adopt his grounds of appeal he filed to this court.

In reply thereto, Mr. Fadhil Mwadoloma – Senior State Attorney submitted that he has noted the irregularities in the charge. The charge is defective. The charge sheet bears only one single name though it appears the accused persons were three. The charge sheet is what initiates/creates criminal proceedings. The whole proceedings in the trial court is nullity.

Mr. Mwadoloma further submitted that the appellant was charged for stealing animals contrary to section 268 (1) (3) of the Penal Code. He was convicted of the offence and sentenced to fourteen (14) years imprisonment on 27/03/ 2017. He submitted that the sentence in cattle theft is under Minimum Sentence Act, Cap 90. Section 5 (b) of the said Act provides a sentence of five years.

Mr. Mwadoloma insisted that the trial magistrate imposed an excessive sentence of 14 years and misused his discretion. He submitted that the appellant is in prison for more than three (3) years and has served a substantial part of sentence of which he has no reason whatsoever to pray for re-trial.

In rejoinder, the appellant prayed for the court to release him from prison.

I have keenly followed the arguments of the appellant and that of Mr. Fadhil Mwandoloma for the respondent *cum* republic during the hearing of this appeal. I have as well read between the lines the appellant's grounds of complaint and the entire proceedings of the trial court.

Addressing the issue as raised by Mr. Fadhil Mwandoloma- Senior state attorney that the charge sheet which initiated the criminal proceedings against the appellant in this case is defective. Mr. Mwandoloma submitted that charge sheet bears only one name though it appears the accused persons were three. My scrutiny of the charge sheet dated on 06 of October 2016 shows that three accused persons namely Adam s/o Mbalamwezi, Makalawa s/ Lazaro @ Maliatabu and Florence s/o Lucas @Mlawa were arraigned before the District Court of Kalambo in a Criminal Case No. 70 of 2016. After full trial the trial court acquitted the second and the third accused persons after the prosecution side failed to prove the case against them, hence found guilty the first accused person (now the appellant) of the offence he stood charged with. The charge sheet was therefore bearing three names of the accused persons, not otherwise as raised by the learned state attorney.

I concede the fact that the trial magistrate imposed an excessive sentence of 14 years imprisonment to the appellant to an offence which attract a minimum of five years imprisonment according to the **Minimum Sentence Act, Cap 90. Section 5 (b) of the Act** provides thus;

5. notwithstanding the provisions of section 4

(b) Where any person is convicted of stealing cattle, the court shall sentence him to imprisonment for a term of not less than five years.

From above quoted section, it is without doubt that the trial magistrate exceeded the sentence to the maximum considering the fact that the appellant was the first offender.

The fact that the appellant has already served his substantial part of the sentence, and for the interest of justice, I allow the appeal with no any further order.

The appellant is to be set at liberty unless lawfully held.

It is so ordered.

It is so ordered.




D. E. MRANGO

JUDGE

24. 08. 2020

Date - 24.08.2020
Coram - Hon. D.E. Mrango – J.
Appellant - Present in person
Respondent - Mr. Njoloyota Mwashubila - SSA
B/C - Mr. A.K. Sichilima – SRMA

COURT: Typed Judgment delivered today the 24th day of August, 2020

in presence of the Appellant in person and Mr. Njoloyota

Mwashubila – Senior State Attorney for the Respondent/Republic

Right of appeal explained.




D.E. MRANGO

JUDGE

24.08.2020