

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA
CRIMINAL APPEAL NO. 104 OF 2019

*(Appeal from the judgment of the District court of Karatu before Hon. E. E MBONAMASABO –
RM dated 18/10/2018 in criminal case No. 01 of 2018)*

PASCHAL JACKSON.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Hearing concluded....18/11/2019 &

Judgment delivered...10/12/2019

GWAE, J

In the Karatu District Court at Karatu (trial court), the appellant, Paschal s/o Jackson and another person, Felister d/o Safar indicted with an offence of cattle stealing contrary to section 265 and 268 (1) of the Penal Code, (Cap 16, Revised Edition, 2002). In its conclusion, the trial court convicted both accused persons and sentenced them to the term five (5) years imprisonment.

Initially, the prosecution alleged that on the 7th day of December 2017 at about 06:00 hrs at Kisiriri area within Karatu District in Arusha Region, the

appellant and the said Felister did steal two (2) heads of cattle valued at Tshs. 1,200,000/=the property of Elisante Simion.

The substance of the prosecution evidence which led to the trial court's satisfaction that, the charge against the appellant and his co-accused person was proved to the required standard was to the following effect; that the material date the appellant took the heads of cattle owned by Elisante Simion out of the kraal for grazing. The complainant was later on informed by the appellant that his four heads of cattle were stolen. That, on the 12/12/2017 at about 06: 00 hrs the complainant received a call from one person who informed him that there were seen two heads of cattle with a mark 19 at Felister's kraal. The complainant rushed to the place where he was told that his heads of Cattle were seen. He found them being grazed by children to whom he inquired as to a person who brought them thereat, those children told the complainant that it was Felister (mother) and one boy.

Having identified his two cows and having known those who brought the cows to the Felisters' house, the complainant furnished the information to police and village leaders. That, militia men took care of the cows and 12th December at about 22: 00 hrs the appellant came at the house owned by Felister while in a company of the said Felister. The appellant and Felister having seen police and

other people (PW2, PW3) including the owner of the cows (PW1) attempted to run away however they were eventually arrested.

There is also evidence that the appellant approached one Gabriel (DW2) in order to sell two heads of cattle at the house owned by the appellant's co-accused. The DW2 went to see the cows which were to be sold by the appellant but the DW2 declined to buy because there was no requisite permit for sale.

On her defence, the said Felister denied to have committed the offence and raised a defence of alibi that he was at Babati when the cows were brought by the appellant. She further contended that she rented her house to the appellant for Tshs. 10,000/= per month whereas the appellant patently denied having committed the offence and seriously refuted being a tenant to the said Felister.

Feeling aggrieved by both trial court conviction and the sentence meted into him, the appellant is now appealing on the following grounds;

1. That, the trial court erred in law and fact for relying on the defence of DW1 as sufficient evidence to incriminate the appellant
2. That, the trial court erred in law and fact when he failed to scrutinize the documentary evidence adduced by the prosecution side
3. That, the trial court erred in law and fact for failure to consider the appellant's defence.

4. That, the trial court erred in law and fact for failing to evaluate the evidence on record and instead allowing his own speculation to influence his judgment
5. That, the trial court erred in law and fact to enter the conviction against the appellant while the offence was not proved beyond reasonable doubt.

Before this court, the appellant appeared in person while the Republic was duly represented by **Mr. A. Hatibu**, the learned state attorney. The appellant merely sought the adoption of his grounds of appeal contained in the petition of appeal whereas the learned state attorney argued the 1st, 2nd and 3rd ground of appeal jointly that the trial court magistrate considered the evidence adduced by both side in arriving at his conclusion. He added that though there is no direct evidence incriminating the appellant but there is ample circumstantial evidence particularly his conducts of looking for the market of the two cows running away after he had seen people. He thus sought for an order dismissing this appeal.

In his rejoinder, the appellant stated that he was neither found in possession of the cows nor was he living in the residence of the said Felister. He finally prayed for being released from prison forthwith.

It is trite law that a conviction against an accused person is only secured when there is a proof of the charge beyond reasonable doubt by the prosecution and not mere assertion. By doing so possibility of convicting an innocent person

shall be greatly avoided. The burden of proof on the prosecution side has been consistently emphasized in a numerous courts' decision for instance in the case of **Nkanga Daudi v. Republic**, Criminal Appeal No.316 of 2013 (unreported) where the Court of Appeal stated:

"It is the principle of law that the burden of proof in criminal cases rest squarely on the shoulders of the prosecution side unless the law otherwise directs and that the accused has no duty of proving his innocence "

Now to the **1st ground** of appeal herein, it is an established principle that the evidence of co-accused is not worthy of reliance to form basis for conviction simply because an accused person charged with other (s) may decide to ensure that he is exonerated from criminal liability by incriminating his or her co-accused person. Always a weight of evidence in courts depends on its believability and persuasiveness. This piece of evidence by co-accused must always be treated with great caution. Nevertheless, in our present criminal case, the evidence of DW1 is corroborated by the prosecution witnesses as well as the defence (DW2 DW3 who testified that the appellant was tenant to the house where two heads of cattle were found and that he was the one who brought those cows thereat. It must be known that any witness who is at witness box is treated as witness unless his or her demeanors are questionable.

In the **2nd 3rd and 4th grounds** of appeal herein above, it is undoubtedly that the evidence on record as far as the offence of cattle theft is concerned is entirely circumstantial, in order for such evidence to be relied it must meet the following conditions adopted by the Court of Appeal of Tanzania in Criminal Appeal No. 247 of 2008 between **Ndalahwa Shilanda and Buswelu Busaru v. Republic** (unreported)

- i. "The circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established
- ii. Those circumstance must be a definite tendency unerringly pointing towards the guilt of the accused
- iii. The circumstances taken cumulatively, should form a chain so, complete that there is no escape from conclusion that within all human...The crime was committed by the accused and not one else"

The Court of Appeal also in the case of **Abdalla Leje @ Mchima Mabula v. Republic**, Criminal Appeal No. 195 of

2007 (unreported) held:


"In law, where there are two possible views on the evidence, one pointing to the guilt of the accused person and the other to his innocence, a court of law must adopt the one favourable to the accused person..."

Looking at the prosecution evidence (PW1-PW5), if the appellant who was taking care of the heads of cattle owned by PW1 and the one who informed PW1 about the cattle theft as well as the one who was possibly seen by the children and DW3 bringing the cows to the Felister's house together with Felister. His subsequent act of being in a company of the said Felister going towards the kraal where there were two heads of cattle found by the owner and their subsequent conducts of running after they had seen people are indicative of guilty mind. More so the appellant's subsequent act of having approached DW2 with a view of selling the stolen cows. In these circumstances I am bound to find that ordinary rule of circumstantial evidence must be applied, namely that, circumstances must be in a way of convincing any reasonable person that no other conclusion was reasonably possible. The appellant's acts when considered cumulatively lead to a conclusion that the appellant's guilt is sufficiently pointed.

Due to the said circumstantial evidence, I am satisfied that the charge against the appellant was proved beyond reasonable doubt. Thus the 5th ground is dismissed.


I am finally of the decided view that, the appellants' guilt on the offence of the offence of cattle theft was proved beyond reasonable doubt. The trial court conviction and sentence are therefore upheld. The appellant's appeal is consequently dismissed in its entirety.

It is ordered accordingly.


M. R. GWAE
JUDGE
10/12/2020

Right of appeal to the Court of Appeal fully explained




M. R. GWAE
JUDGE
10/12/2020