

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL APPEAL NO. 11 OF 2018

(Arising from Criminal Case No.46 of 2016 of the District Court of Bariadi at Bariadi)

MWITA NYIRAHA.....APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

Date of Last Order: 30/03/2020

Date of Judgment: 01/04/2020

JUDGMENT

C. P. MKEHA, J

Before Bariadi District Court, the appellant was arraigned and prosecuted along with other accused persons who are not part to the present appeal. The prosecution of the appellant was in respect of an offence of cattle theft contrary to sections 265 and 268(1) and (3) of the Penal Code. The particulars of the offence charged were such that on the 11th day of April, 2016 at Dutwa Area within Busega District in Simiyu Region, the appellant, fraudulently and without claim of right, did steal four cows all valued at TZS. 1,800,000/= the properties of Simon s/o Lazaro. The appellant

pleaded not guilty to the charges. However, at the end of trial he was convicted as charged and sentenced to be imprisoned for five (5) years. The appellant was dissatisfied. He preferred the present appeal consisting of six (6) grounds of appeal.

In arguing the present appeal, the Appellant was represented by Mr. Kalabo Ntinginya learned advocate. On the other hand, Ms. Mbughuni learned Senior State Attorney represented the Respondent/Republic.

The six grounds of appeal, when carefully considered, boil down into one general ground that, the appellant's case was not proved to the required standard before the trial court.

Mr. Ntinginya learned advocate submitted for the appellant that, the evidence adduced, was at variance with the charged offence. The learned advocate clarified that, whereas the appellant was charged with cattle theft, evidence indicates that the appellant did not steal.

The learned advocate further submitted that, it was wrong for not examining the complainant whose cattle were reportedly stolen. The learned advocate added that, it was wrong to convict the appellant in the absence of physical exhibits in support of the offence charged.

The learned advocate went on to submit that it was wrong to base the appellant's conviction on evidence of co-accused without taking the necessary precaution.

Ms. Mbughuni learned Senior State Attorney supported the appeal. According to the learned State Attorney, the charge sheet does not indicate that the stolen cows had special marks as testified by the prosecution witnesses. The learned State Attorney went on to submit that, PW2 was unable to identify any of his cows from a herd of cattle found at the accused's premises. The learned State Attorney finally submitted that, the named victim was not called upon to support the charges which was critical in the circumstances of this case. An important question that arises is, whether the finding of guilty was justified by the evidence on record.

As rightly submitted by the learned Senior State Attorney, identification of the stolen cattle was crucial in the circumstances of this case. Evidence to the effect that the victim really identified the stolen cattle from the appellant's herd of cattle is missing. Failure to summon the victim as a prosecution witness was another blow to the prosecution's case. PW2 who got an opportunity of identifying stolen cows from the appellant's herd of cattle was unsuccessful in identifying the same. **See: Rashid Omary**

Kibwetabweta Vs Republic, Criminal Appeal No.254 of 2016, CAT
at Iringa. It is therefore correct to hold as I do that, the charge against the
appellant was not proved to the required standard.

For the foregoing reasons, the appellant's conviction is quashed. The
earlier imposed sentence is set aside. I make no order for the appellant's
release from prison since, as per a letter from Prison Authorities dated
06/01/2020, the appellant was released from prison on 09/12/2019
through Presidential Clemency.

Dated at **SHINYANGA** this **1st** day of April, 2020.


C. P. MKEHA
JUDGE
01/04/2020

Court: Judgment is delivered in the presence of Ms. Mbughuni learned
Senior State Attorney.

