

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(DC) CRIMINAL APPEAL NO. 46 OF 2020

(Arising from Criminal Case No. 125 of 2019 at Kibondo District Court before Hon F. Y. Mbelwa RM).

1. BUCHUMI SHABANI
2. NDIKULIYO REVELINO
3. NDAISHIMIYE DEO

.....APPELLANTS

VERSUS

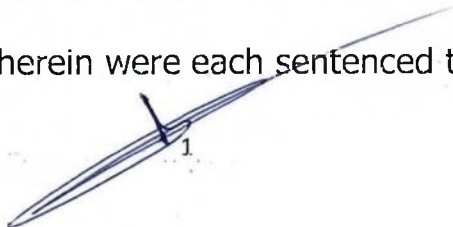
THE REPUBLICRESPONDENT

JUDGMENT

10th Feb. 2021 & 09 March. 2021

A. MATUMA, J.

The appellants herein ***Buchumi Shabani, Ndikuliyo Revelino*** and ***Ndaishimiye Deo*** along with one **Ndyankunze Joseph** who is not subject to this appeal, were charged in the District Court of Kibondo at Kibondo for an offence of Animal stealing contrary to section 258 (1), and 268 (1)(3) of the Penal Code, (Cap. 16, R.E. 2002). It was alleged that on 2nd day of May, 2019 at about 15:00 hours at Nkuba Village within Kakonko District in Kigoma Region, the appellants jointly did steal three goats whose total value was **Tshs 150,000/=** the property of one ***Saimon s/o Kiboge***. Upon their conviction the appellants herein were each sentenced to five years


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imprisonment and each of them to pay the victim the sum of **Tshs.35,000/=**. Their fellow **Ndyankunze** being a minor of only 17 years old, was sentenced to twelve months conditional discharge and his parent or guardian to pay the victim Tshs. 45,000/= as compensation.

The appellants herein became aggrieved with such conviction and sentence, they have thus preferred this appeal with three (3) grounds essentially lamenting that;

- 1. The evidence adduced by the prosecution witnesses was not sufficient to convict the appellants as no genuine exhibit was tendered in court to prove the offence.*
- 2. There were contradictions in the testimonies of the prosecution witnesses on the colour of the goats stolen and the place where goats were stolen.*
- 3. The Magistrate erred in law and facts as he reached the decision basing on one side evidence of prosecution while the evidence adduce by the accused persons was strong enough to acquit them.*

Before dwelling into the appellants' complaints, let me briefly draw the facts upon which the appellants were arrested, charged and subsequently convicted. The appellants lived at Mtendeli Refugees Camp. The victim Mr. Saimon Kiboge PW2 on the material date (02/05/2019) tied his goats for

grazing near Keza Primary school. He then went to his farm. On his return he found three goats stolen. He reported the matter to the local authority and was given a permit to trace them within Mtendeli Refugees Camp. He traced them without success.

On the same day at 15:00 hours, PW1 Muvira Erick a refugee security officer in the camp got informed that there were people slaughtering goats in a certain house within the camp while there was a quarantine. PW1 went to the crime scene which was identified to be the home or house of the 1st appellant. Thereat, the herein appellants were allegedly found slaughtering three goats one of which was already skinned. They were subsequently arrested by militias including PW3 and handed to police. Police gave notice to the general public for whoever lost goats to enter appearance for identification. PW2 the victim identified them and later the flesh of the three goats and the skin were taken to the magistrate at Kasanda Primary Court for an order of disposal as they were perishable goods.

It is from the herein facts, the appellants found themselves into trouble leading to their conviction and sentence hence this appeal as herein above stated.

At the time of hearing of this appeal, the first appellant was absent and reported to have escaped from custody but the 2nd and 3rd appellants were present in person. I ordered that, since the 1st appellant is reported by the

prison authority to have escaped from custody his appeal be dismissed and I consequently dismissed it for want of prosecution. The appeal thus proceeded in respect of the 2nd and 3rd appellants alone.

The respondent was represented by Mr. Benedict Kivuma learned State Attorney.

The two appellants submitted generally on their joint grounds of appeal whereas the 2nd appellant argued that the witnesses who testified against them were perhaps corrupted as they were only local militias (sungusungu) in the locality without any civilian. He further argued that they were arrested without exhibit.

The 3rd appellant joining hands with the 2nd appellant argued that the evidence of the prosecution was contradictory because in the preliminary hearing it was stated that they were arrested at Nkuba village but the witnesses testified that they were arrested in the camp. He also challenged the act of not bringing the exhibits in court and prayed to be acquitted.

The learned State Attorney on his party strongly opposed the appeal arguing that the appeal is without merit because the exhibits were disposed in accordance to the law and the inventory in its place was tendered in evidence by PW4 D. 7251 Ssgt. Christopher. According to him the inventory stood for the exhibits.

On the ground that there were contradictions between the prosecution witnesses regarding the place where the appellants were arrested and the colour of the goats, the learned state attorney submitted that, the trial court addressed the issue and properly analysed it in that there was no contradiction between PW1 and PW2 whom the appellant alleged to have contradicted each other. The learned State Attorney further argued that even if there would be contradiction, then the same would be minor. He backed up his argument with the case of ***Mohamed Said Matuta Versus Republic (1995) TLR 3*** where it was held that the court would rule whether the contradiction goes to the root of the case or not.

On the 3rd ground of appeal the learned State Attorney argued that since the appellants were recently found in possession of the stolen goat (meat) and also attempted to escape but arrested, and that there was quarantine in the locality in which any slaughtering of animals was banned but they were found slaughtering the stolen goats, the case was proved beyond reasonable doubt. He finally called this court to dismiss this appeal.

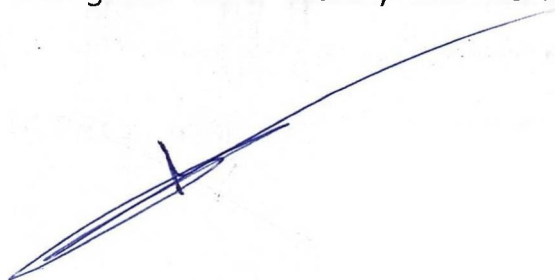
In their respect rejoinder, the appellants insisted that they were wrongly convicted and that the escape of their fellow 1st appellant should not be taken to affect them.

Having gone through the records of the trial court, the grounds of appeal before me and listening the arguments of the parties on this appeal, I find

out that the major issue for determination is whether the prosecution case was proved beyond reasonable doubts against the appellants herein. I will thus determine the complaints of the appellants generally in answering the issue.

About the none tendering of the exhibits, the appellants meant the flesh (goats' meat) and skin of the goat allegedly found with them. As rightly argued by the learned state attorney, the evidence on record depicts that such exhibits were disposed off by order of the court and in its place an inventory was filled and dully tendered in evidence as exhibit P1. PW 4 Ssgt. Christopher had in fact explained in detail that the exhibits were perishable and sought an order of the court for their disposal which was dully obtained as per exhibit P1 supra and none of the accused persons objected its admissibility. In the circumstances the complaints for none production of the meat of the stolen goats as exhibits in court which constitutes the 1st ground of appeal is an afterthought and unfounded hence I dismiss it.

On the second ground of appeal in which the appellants allege contradictions in the testimonies of the prosecution witnesses on the colour of the stolen goats and place where the goats were stolen, the learned magistrate observed;



'I have nowhere see in the record such discrepancy on colour identity of the stolen cattle. All the time PW2 the owner, maintained to have lost three goats. Their colour is well described. The described colour is matching with what is identified at police by PW1.'

With the herein observation by the learned trial magistrate, I am inclined to agree with the learned state attorney that there was no any material contradiction in the prosecution testimonies. Afterall, nobody else claimed ownership of the goats including the appellants except PW2. The claim of PW2 that the flesh of the three goats found to the appellants and the skin which is the subject matter to this appeal were of his stolen three goats remained unchallenged. The appellants did not even cross examine on the colour. I thus agree with Mr. Benedict Kivuma learned State Attorney that even if it was to be found such discrepancies, in the circumstances of this particular case the same would be very minor which does not go to the root of the case as it was held in various cases including that of **Mohamed Said Matuta** supra and **Dickson Elia Nsamba Shapwata and another v. Republic, criminal appeal no. 92 of 2007** which held;

'Normal contradictions and discrepancies are bound to occur in the testimonies of the witnesses due to normal errors or observation, or errors in memory

due to lapse of time or due to mental disposition

such as shock and horror at the time of occurrence'

There was as well no contradiction on where exactly the goats were stolen as only PW2 explained the place to be Nzangwa hill, near Keza Primary school. About their arrest PW1 and PW3 Wilson Ilakoze, were the only witnesses for the fact. They consistently testified that all the appellants and their companions as herein above stated were at the home of the 1st appellant slaughtering the goats inside the house and in an attempt to arrest them they escaped. PW1 and PW3 raised an alarm which was well responded and all the accused were soon arrested. There is no contradiction in that. The second ground of appeal is thus unfounded and is hereby dismissed as well.

The third and last ground of appeal tend to challenge the prosecution evidence to the effect that it was not enough for their conviction. Here the would be issue for determination is whether the appellants were arrested on the scene of the crime and found in possession of the remains of the three stolen goats. PW1 and PW3 as I have stated earlier were the arresting officers among others. They gave positive evidence that they found the appellants on the crime scene slaughtered three goats, they arrested them in a help of some other people who responded to the alarm. These witnesses gave oral direct evidence and therefore the only determinant factor to their

respective testimonies is credibility. In the case of ***Goodluck Kyando versus Republic, (2006) TLR 363*** it is a well settled principle that every witness is entitled to credence and have his evidence accepted unless there is good and cogent reasons for not believing such witness. In the instant case I have no good and cogent reasons to disbelieve them provided that PW2 the victim is not the one who arrested them nor pointed them for their arrest. PW1 and PW3 who arrested them had no interest with the stolen goats and they were moved by the act of the appellants to slaughter the goats at the time when there was a quarantine prohibiting inhabitants in the Camp to slaughter animals. PW4 did not even know the owner of the goats whose meat and skin were found with the appellants which necessitated him to give notice to the general public which in turn PW2 was identified to be the owner.

The appellants were chased and or named and arrested on the same day which adds credence to the evidence of the prosecution witnesses as the ability of a witness to name the suspect at the earliest opportunity is an all-important assurance of his reliability as it was held in the case of ***Marwa Wangiti Mwita and Another v. Republic (2002) TLR 39.***

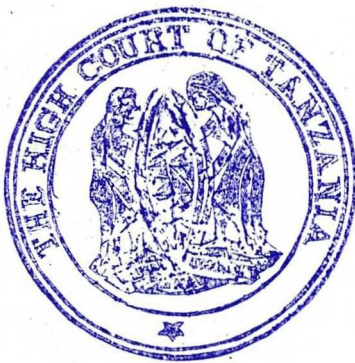
Thus, the appellants ought to have accounted for their possession of those stolen goats. They opted not to offer any explanation thereof and instead made a general denial not only on their arrest at the crime scene but also

on being found in possession of the stolen goats. In the circumstances they benefit treatment within the principle of recent possession in which a person who is found in possession of a recently stolen property in the absence of thorough and satisfactory explanations is deemed a thief, a breaker or a guilty receiver. See the case of ***Director of Public Prosecutions V. Joachim Komba (1984) TLR 213***

The appellants also lamented that a person who notified PW1 about the appellants to have been slaughtering the goats was not called as a material witness for the prosecution. It is my firm finding that such witness was not so material provided that his information was worked upon by PW1 and an independent evidence gathered therefrom. That is; after PW1 worked on the information went to the crime scene, witnessed the crime by himself, participated in the arrest and finally came in court as a witness. His evidence sufficed by itself without necessarily that of his informer. Even though, as provided for under section 143 of the Evidence Act, no particular number of witnesses is required for the proof of any fact. What is important is the witness's opportunity to see what he/she claimed to have seen, and his/her credibility. See the case of Yohanes Msigwa versus Republic (1990) TLR 148 (CAT). Also in the case of ***Emmanuel Luka and two others V. The Republic, Criminal Appeal No.325 of 2010*** the Court of Appeal at page 4 quoting section 143 supra held;

'Section 143 of the evidence Act, Cap. 6 R.E. 2002, provides clearly that no specific number of witnesses is required to prove a case.'

Therefore, the consideration ought to be the quality of evidence by the prosecution witnesses and whether it sufficed to convict the appellants. In my view and finding it did suffice as per its analysis herein above. This appeal has thus been brought without sufficient cause. The same stands dismissed in its entirety. Right of further appeal to the Court of Appeal of Tanzania is explained to the parties subject the requirements of the relevant laws governing appeals thereto. It is so ordered.



A. MATUMA

JUGDE

09/03/2021