

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

CRIMINAL APPEAL NO. 52 OF 2021

ARON ANDREA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

[Appeal from the Decision of District Court of Kishapu at Kishapu.]

(Hon. A.K. ISMAIL RM)

dated the 20th day of April, 2021

in

Criminal Case No. 171 of 2020

JUDGMENT

18th May & 8th July, 2022.

S.M. KULITA, J.

Aron Andrea, referred to as the Appellant in this appeal, was charged in the District Court of Kishapu for Cattle theft contrary to the provisions of section 268(1) and 258(1) of the Penal Code [Cap. 16 RE 2019]. It is in the particulars of the offence that, on the 2nd day of October, 2020 at Dodoma area in Kishapu District, willfully and unlawfully the

Appellant herein did steal two oxen valued at Tshs 2,000,000/=, the property of one Andrea Kingu.

In a nutshell, the prosecution case as it was unfolded by its witnesses is that, on the 2nd day of October, 2020 the Appellant who is the son of the complainant broke the zoo and stole two oxen. Upon realizing the theft, people started searching for them. Fortunately, they were phoned from Igunga that there is a person who wants to sell two oxen without permit. They rushed to Igunga and identified the oxen being the ones stolen from the victim/complainant. The matter was reported at the police station. After some days the Appellant was arrested and institution of this case followed.

On his part, the Appellant denied to have stolen the said oxen from the complainant. He stated further that, he had just taken his oxen that he was given by his grandfather.

To the conclusion of the trial, the Appellant was accordingly found guilty, and upon conviction, he was sentenced to five years' imprisonment. This was on 20th of April, 2021.

Aggrieved with that decision, the Appellant preferred the instant appeal relying on five grounds which may be summarized as follows: **One,**

that his plea was equivocal; **two**, that the case against him was cooked; **three**, the trial court erred for not recording, assessing and evaluating properly the Appellant's evidence; **four**, the trial court erred in convicting the Appellant while the prosecution evidence has contradictions; **five**, the trial court did not consider the Appellant's evidence and mitigation.

The Appeal was heard on 18th of May, 2022. The Appellant appeared in person whereas the Respondent, Republic had the service of Ms. Gloria Ndoni, learned State Attorney who resisted the appeal.

Submitting in support of the appeal, the Appellant decided to adopt his grounds of appeal as the submission for his appeal.

In reply Ms. Ndoni submitted in accordance to the first ground of appeal that, the Appellant did not plead guilty to the charge, that is why the case was fully tried. She was thus of views that, had the Appellant entered a plea of guilty, the matter would not have gone to full trial.

Regarding grounds number 2 and 4, Ms. Ndoni submitted collectively that, the case was proved at the required standard by the five prosecution witnesses. She went further stating that, PW1 stated to have been given information about theft of his two oxen. PW2 the one who used to take care of the oxen confirmed the theft and upon searching, the

same were found with the Appellant. Ms. Ndoni went further stating that, the Appellant did not cross examine PW1 who testified as the owner of stolen oxen. On that, she stated that according to the case of **Nyakwama Ondaro @ Okware v. R, Criminal Appeal No. 507 of 2019, CAT at Musoma**, not cross examining the Appellant is taken as the admission of the material facts adduced by the witness.

Ms. Ndoni went further contending that, the conduct of the Appellant also shows that he did commit the offence. She referred to the testimony of PW3 that, when the Appellant was arrested with the stolen oxen, he escaped and came to be re-arrested later. She added that, according to the testimony of PW4, the Appellant wanted to sell the oxen without permit and upon been asked he started running away. With this evidence the Counsel formed an opinion that, the case is genuine and not fabricated.

Concerning contradictions on the prosecution case, the Counsel admitted that there is a minor one. She said that it is concerned with a number of people who went to arrest the Appellant, in which PW2 said that they were three while PW4 said that they were four. To justify her assertion that the contradiction is minor, hence it could have not affected

