

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

CRIMINAL APPEAL NO. 13 of 2022

*(Originating from Criminal Case No. 37/2019 in the District Court of
Nanyumbu at Nanyumbu)*

HASSAN ISMAILAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

Muruke, J.

Hassan Ismail was charged and convicted with the offence of Animal steal contrary to section 268(1) of the Penal Code Cap 16 R.E 2002, thus sentenced to 15 years imprisonment. Being dissatisfied, he filed present appeal after being granted extension of time on 2nd March 2022, raising five grounds articulated in the petition of appeal.

On the date set for hearing appellant was unrepresented thus requested his grounds of appeal to be his submission in support of his appeal reserving right to make rejoinder if need a rises. Respondent was represented by Nunu Mangu, Learned State Attorney, who did not object appellant prayer. This court then asked respondent counsel to replay appellant grounds of appeal.

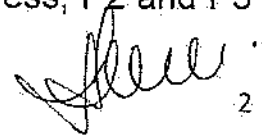


On ground one Learned State Attorney submitted that, there is no serious problem as shown by appellant in ground one, both parties gave evidence that was evaluated by trial court. At page 4 of the Judgment trial court said it found the accused guilty and is convicting him to the offence charged. Failure to mention the offence is not fatal insisting Learned State Attorney citing case of Peter Kabi and another Vs. Republic, Criminal Appeal No 5 of 2020, Court of appeal at Dar es salaam (unreported) at page 26 – 27.

On ground two complaint is on contradiction of witnesses. Respondent counsel submitted that: - There is no contradiction of witnesses. At page 3 of Judgment trial court said court has looked in to the credibility of the witnesses, and satisfied that they were telling the truth. More so appellant did not cross – examine the witnesses. Failure to cross – examine the witness their evidence stand to be believed, citing Court of Appeal decision in Damian Ruhele Vs. Republic Criminal Appeal number 501 of 2007, (unreported)

Respondent counsel submitted on ground three that PW1 evidence did not need any corroboration as he was the eye witness who told PW2, and finally PW3. Ground four appellant complaints is on failure by prosecution to bring independent witness. Learned State Attorney while citing section 143 of Tanzania Evidence Act, Cap 6 R.E 2022, submitted that no particular number of witness required to prove the offence. It is rather weight attached to the evidence. Witnesses arranged were the relevant witness to the prosecution case, insisted appellant case.

Ground five is general complaint, that prosecution did not prove their case. Respondent counsel relied on evidence of PW1 an eye witness, P2 and P3



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as reliable evidence that grounded conviction, thus, requested for dismissal of all the grounds and entire appeal for lack of merits. In rejoinder appellant raised new issue of none payment of his salary by PW2, being the cause of him being charged and convicted.

Having heard both parties' submission, and as correctly submitted by respondent counsel, evidence of PW1 an eye witness, is one's that grounded conviction. While being cross examined by appellant then accused at page 6 of trial typed proceedings PW1 replied that: -

"We were two in the field. I asked you why selling cows and you replied that owners permitted. We were two of us. The selling can be done at the village or at glazing field I saw you selling the cattle.

While being re – examined PW1 at page 6 of trial court proceedings he replied that: -

"I and the accused went to the field. I asked the accused and he said the cattle were sold by owners while owners denied to have done so. "

In totality evidence of PW2 Francis Edward Kalamazao and PW3 Abdul Rashid Mchemba, both testified that appellant was the one grazing their cows. On 17/10/2018 he returned at evening with two cows missing. Their evidence was clear and straight. Appellant then accused did no cross examine both PW2 and PW3. As seen at page 7 of the trial court proceedings below:

XXD by Accused

Nil



So, evidence arranged by prosecution, proved the offence, thus ground 1, 2, 3, 4, 5, of the appeal lacks merits, accordingly dismissed. Records does not support appellant claim that, he was convicted basing on weak defence case, rather, it is the evidence of PW1, PW2 and PW3 that grounded conviction.

Equal so, ground 6 lacks merits.

I have considered, sentence of 15 years. It is on the higher side although, the offence falls under minimum sentence Act. Section 5 (b) of the Minimum Sentences Act, Cap 60 R.E 2009 provides that:

“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 the provision of law above, five years is minimum sentence. I thus, reduce the sentence to five years' imprisonment from the date of conviction and sentence. In totality appeal on merit of conviction is dismissed, only sentenced reduced as above.




Z. G. Muruke

Judge

12/09/2022

Judgment delivered in the presence of W. Ndunguru Senior State Attorney for the respondent and appellant in persons.




Z. G. Muruke

Judge

12/09/2022