

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY**

AT MUSOMA

PC CRIMINAL APPEAL NO. 19 OF 2022

*(Arising from Criminal Appeal No. 44 of 2022 of the District Court of Tarime at Tarime
dated on 28th June, 2022 before Hon. V. A. Balyaruha – RM)*

BETWEEN

OKELO NANGA.....1ST APPELLANT

JOFU OKELO.....2ND APPELLANT

VERSUS

LEONARD ADENY ACHIEN.....RESPONDENT

JUDGEMENT

2nd Nov & 14th Dec, 2022.

M. L. KOMBA, J.:

This is the second appeal. Appellants who are father and son, lost in both two lower court, still in determination of searching for justice they knocked the door of this court hopping for the best. Brief of the facts can be narrated as follows. On 27/12/2021 around 16:30 at Kowak village within Rorya District in Mara Region, it was alleged that appellants stole six cows worth 4,500,000 the properties of the respondent. Appellants charged and convicted at Primary Court of Kinesi with the offence of stealing certain animals contrary to section 268 of Penal Code, Cap 16 R. E. 2019.

After full trial which was proceeded in the absence of the second appellant as he was nowhere to be found, the trial court sentenced the appellants to twelve months community service and they were ordered to pay the respondent Tsh.4,500,000/ as a compensation for his stolen cow.

Aggrieved by the trial court decision, appellants lodged four grounds of appeal to District court of Tarime at Tarime (the first appellate court) where parties were given chance to argue for and against appeal. After hearing the parties on appeal, the first appellate court was satisfied that the case was proved beyond reasonable doubt and uphold decision of the trial court both sentence and compensation. As hinted earlier on, appellants lodge two grounds of appeal to show their dissatisfaction of the first appellant court decision, that is;

- 1. That the appellate court erred in law and fact by upholding the decision of the trial court while the charge against the appellants were not proved beyond reasonable doubts.*
- 2. That the appellate court erred in law and fact by upholding compensation order made by the trial court without any prove of the same.*

When the appeal was called on for hearing, the appellants was represented by Mr. Samson Samo, advocate while respondent appeared in person,

unrepresented. When given time, Mr. Samo submitted that appellants are not in support of both lower courts findings because the offence was not proved beyond reasonable doubt and submitted that the position of the law is clear that who allege must prove and that his clients are innocent.

It was his submission that at page 1 of the Primary Court judgement respondent admitted that he did not see respondents untie cows at the place where he tied them. He was informed by neighbors. At page 2 of the same judgement PWII informed the court that he saw appellants untie cows while appellants claimed his cow to be lost. PWII informed the trial court he saw appellants with cow but he did not raise any alarm and they did not report the matter to police. It was his submission that the case was staged by the respondent.

The respondent did not had have much to say. He informed the court he had witnesses in primary court who testified and the court was satisfied and appellants were convicted. It was his submission that second appellant refused to sign summons three times and it is his believe that he hides with his cows. He submitted further that he had receipt which was given when he bought cows on 23/12/2011 and he tendered it at the trial court. The price of one cow was Tsh.750,000/. Cows were stolen on 27/12/2021 and

the following day he went to informed the hamlet officer, later on he was informed that it was appellants whom untied his cow.

After close follow-up of submission by parties this court has the duty to determine whether the appeal is meritorious.

I am aware that this is the second appeal and the practice is that the Court should, in a very exceptional circumstances interfere the finding of the lower courts when it is clearly shown that there was misapprehension of the evidence, miscarriage of justice or violation of some principles of law or procedure by the courts below. **(see, Joseph Safari Massay vs Republic, Criminal Appeal No. 125 of 2012, and Felix s/o Kichele & Another v. Republic, Criminal Appeal No 159 of 2005 and Julius Josephat vs Republic, Criminal Appeal No, 03 of 2007 (all unreported).**

Reading records of the 1st appellate court where the Magistrate combined three grounds of appeal and analysed the evidence of PWII and PWIII which was adduced at the trial court. At page 3 last paragraph PWII informed the court he saw appellants untying cows and it was repeated habit. PWIII also was an eye witness to this case and these testimonies rebut the defence of alibi as raised by appellants. This analysis is found at page 4 and the

Magistrate concluded on the combined grounds to be worthless at page 5 and discussed about the value of the cows which was admitted at the trial court while the 1st appellant did not object.

Both lower courts decided against the appellants on point of facts and law as the case was proved beyond reasonable doubts. After perusal of the record of 1st appellant court I am satisfied on what the 1st appellate court did. This being the second appeal it was expected that the appellant could raise the point of law. To my view there is no other point of law has been raised apart of proving the offence to the required standard.

As there is no valid point of law raised in this second appeal, I find no reason to differ from both lower court's findings of fact. It is established principle that a court of second appeal will not routinely interfere with the concurrent findings of the fact by the two courts below except where they completely misapprehended the substance, nature and quality of evidence; where there is misdirection or non-directions on the evidence or where it is clearly shown that there is miscarriage of justice or a violation of some principles of law or practice. **See Salum Mhando Stores vs. Republic** [1993] T.L.R 170.

In this instant case, the District Court which was the first appellate court, concurred with the findings of facts by the trial Court. So has this court

having considered and evaluated the evidence before it and is satisfied that there was no evidence upon which both lower courts could make decision in favor of the appellants.

In the upshot, the appeal is dismissed as it is unmeritorious.

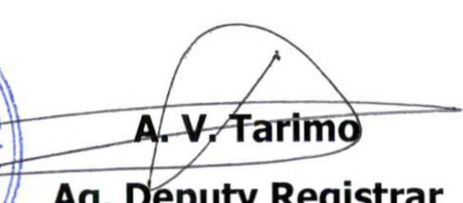
No order as to costs.

M. L. KOMBA

Judge

Judgement delivered in chamber in the presence of Mr. Samson Samo Advocate for appellant and Respondent who appeared in person.




A. V. Tarimo
Ag. Deputy Registrar
14th December, 2022