

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

DC CRIMINAL APPEAL NO 11 OF 2022

(Originating from Criminal Revision No. 1/2021 of the District Court of Kondoa and
Criminal Case No. 44/2021 of Mrijo Primary Court)

1. MDAMBA MIKIDADI 2. RAMDHANI SADIKI 3. TEULE RISASI	} APPELLANTS
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VERSUS

RASTA MUKOLO **RESPONDENT**

JUDGMENT

31/08/2022 & 05/10/2022

KAGOMBA, J.

In the normal course of exercise of its revisionary powers under S. 22(2) of the Magistrates' Courts Act, [Cap 11 R.E 2019], the District Court of Kondoa corrected anomalies in the decision of the Mrijo Primary Court which had applied the Circular of the Principal Judge in sentencing the appellants having convicted them of a scheduled offence of cattle theft under the Minimum Sentence Act [Cap 90 R.E 2002] (henceforth "**MSA**").

The District Court reversed the sentence of one-year conditional discharge and substituted in lieu thereof with custodial sentence of five (5)

years while the order of payment of three million shillings by the appellants as compensation to the complainant was maintained.

The District Court, in making its finding, considered the requirement of S. 5(b) of the **MSA** which has provided for mandatory sentence of not less than five years imprisonment for the offence of cattle theft, which the appellants were convicted with. Likewise, the District Court considered the provision of S. 5(1)(d) of the Primary Court Criminal Procedure Code (PCCPC) which provides for restoration of property stolen. Thus, the District Court considered the value of stolen cattle shown in the charge sheet to be three million shillings and observed that the appellants were rightly ordered to pay such compensation.

The District Court also emphasized on the requirement for the charge sheet to state clearly the offended section and subsection, as it was the case in this matter, where the charge sheet doesn't state subsection of either S. 265 or 268 of the Penal Code, [Cap 16 R.E 2022] in which the appellants were charged with. However, the District Court's Magistrate with the guidance of the decision of the Court of Appeal in **Khamis Abderehemani vs. Republic** in Criminal Appeal No. 21 of 2017 found the anomaly curable under S. 388 of Criminal Procedure Act, as it didn't prejudice the appellants since the particulars of offence were sufficiently enough to inform the appellants the nature of the offence they were facing.

Therefore, the learned District Court Magistrate proceeded to substitute the sentence from the one (1) year conditional discharge to of five (5) years imprisonment. This decision has irritated the appellants who have filed their appeal based on the following grounds:

1. That, the trial court (district Court) while exercising its revisional jurisdiction, erred in law by proceeding to substitute the sentence to the appellants despite of the anomaly discovered on the defective charge for lack of specificity which occasioned miscarriage of justice as the trial was unfair.
2. That, the case before the trial court was not proved beyond reasonable doubts.

On the date of hearing, the appellants appeared in person, unrepresented, and sought to adopt their Petition of appeal as their submission to the Court.

Mr. Paul Nyangarika, learned Advocate, represented the respondent. When he was given chance to reply to the petition of appeal, he first observed that the appeal in hand was challenging the Ruling of the District Court (F.R. Mhina, R.M) in Criminal Revision No. 1 of 2021 and as such there was no any appeal filed by the appellants to challenge the decision of the trial Primary Court. He argued that the first ground of appeal complaining about the defective charge were therefore misleading.

Mr. Nyangarika also viewed the second complaint unmaintainable as it was supposed to be a ground of appeal against the trial Primary Court's decision rather than opposing the revisionary Ruling of the District Magistrate which was about variation of the sentence only. He found nothing wrong with the said Ruling and for the said reasons he prayed the court to dismiss the appeal.

The above submissions lead to only one issue for determination, which is whether the appeal is meritorious. In the outset, I totally agree with the submission of Mr. Nyangarika. The appeal appears to be misconceived by the appellants. As stated from the very beginning of this judgment, the learned District Magistrate acted the way he acted in the exercise of his revisionary jurisdiction. As correctly submitted by the learned advocate for the respondent, the only matter he touched from the decision of the trial Primary Court was to revise the sentence only. As such appellants have raised new matters not covered by the learned Magistrate.

With regard to the District Court's findings, the same is totally supported by this Court. The provision of S. 5(b) of the Minimum Sentences Act states in clear terms 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**".*

[Emphasis Added]

With the guidance of the above provision of the law, the appellants having been convicted of offence of cattle theft by the Primary Court were to be sentenced to imprisonment for a term of not less than five years. Therefore, it was right for the District Court to substitute the conditional discharge sentence to custodial sentence of five years.

Again, the compensation of three million shillings was rightly ordered by the District Court. S. 5(1)(d) of the PCCPC provides for the order of restoration of property stolen. It states;

"5.-(1) A Court may, where the justice of the case so requires, and shall, in any case where any law for the time being in force so requires, make orders-

a) Not applicable.

b) Not Applicable.

c) Not Applicable

*d) When any person is convicted by it of having stolen or having dishonestly or wrongfully obtained any property, **for the restoration of such property, to the person appearing to the Court to be the owner or entitled to the possession thereof.**"*

[Emphasis Added]

In the circumstances, since the appellants were convicted of cattle theft, they were as well liable to restore the same. Besides, the charge sheet stated the value of the stolen cows as three million shillings, hence the order of compensation was rightly and fairly made. For these reasons, I agree with the reasoning of the learned District Magistrate.

In the upshot, the appeal has no merit and the same is accordingly dismissed. No order to costs.

Dated at Dodoma this 05th day of October, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba", is written over the printed name.

ABDI S. KAGOMBA

JUDGE