

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 73/2006
(ORIGINAL LINDI D/COURT CR. CASE NO. 250/2005
BEFORE: I. ARUFANI – RM)**

ABDALLAH RASHIDI @ KINGO - - - - -APPELLANT

VERSUS

THE REPUBLIC - - - - -RESPONDENT

Date of Last Order: 29/10/2007

Date of Judgement: 14/12/2007

JUDGEMENT

SHANGALI, J.

This is an appeal filed by the appellant Abdallah s/o Rashidi @ Kingo against the decision of the Lindi District Court in Criminal case No. 250/2005. In that case the appellant who was the first accused was charged jointly and together with one Salum S/O Mussa, the second accused with the offence of cattle theft contrary to section 265 and 268 of the Penal Code, Cap 16.

After hearing the evidence from both the prosecution and defence sides the trial Resident Magistrate was satisfied that the evidence against the second accused was weak to base a convicting- upon. As a result the second accused was acquitted and set free. On the other hand the trial Resident Magistrate was firmly convinced that there was sufficient prosecutor evidence to connect the first accused/appellant with the offence. Consequently the trial Resident Magistrate convicted the first accused/appellant and sentenced him to serve five (5) years imprisonment as provided under section 5 (b) of the Minimum Sentence Act, 1971, Cap 90 of the R.E 2002.

The appellant was not satisfied with the decision of the trial District Court and has filed this appeal intending to challenge it.

In essence the appellant complaint is based on the fact that he was not seen nor arrested with the alleged stolen goat. Therefore he was convicted without sufficient and reliable prosecution evidence.

Mr. Hyera, Learned State Attorney who appeared for the respondent/Republic strongly supported the conviction and sentence imposed by the trial Resident Magistrate on grounds that there was overwhelming prosecution evidence deposed by PW1, PW2 and PW3 on how the appellant sold the stolen goat to PW3 at Sh.24,500/=. He submitted that the prosecution evidence was straight and overwhelming and that what the appellant is attempting to raise at this stage is an afterthought because he never raised the same during the hearing or in his defence. Mr. Hyera contended that the appellant was arrested and charged after the commission of the offence and not before.

Having thoroughly gone through the trial courts record of proceedings and the judgement; and having heard the appellants complaints I am totally and completely in agreement with the position of the Learned State Attorney that the appellant was justly convicted and sentenced. The prosecution evidence is clear that it was the appellant who approached PW3 and sold the stolen goat to him knowing that he (PW3) was dealing with goat meat barbecue business at his home. There is also evidence that when the appellant was questioned before PW1, he admitted to have sold the goat to PW3 and asked for pardon while promising to return the money.

The goat was stolen in PW2's oral in the night of 4th November 2005 and in the next morning of 5th November, 2005; during the search the goat was found already sold to PW3 by the appellant. Even if the appellant was not seen or arrested stealing the goat, the doctrine of recent possession hooks appellant as the very person who stole the goat in the absence of sufficient explanation on how he got the goat and sold it to PW3. The circumstances of this case and specifically the credibility of the prosecution witnesses namely, PW1, PW2 and PW3 renders this appeal a waste of time.

To say the least, this is one of those appeals which ought to have been summarily dismissed in the very early stage of filing.


In conclusion, therefore this appeal is hereby dismissed for lack of merits. It is so ordered.




M.S. Shangali
JUDGE
14/12/2007

Judgement delivered todate 14th December, 2007 in the presence of Mr. Hyera, Learned State Attorney and the appellant in person.




M.S. Shangali
JUDGE
14/12/2007