

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA.

PC CRIMINAL APPEAL NO. 1 OF 2018

(From Criminal Appeal No. 2 of 2017 in Ngorongoro District Court Originating
from Digodigo Primary Court Case No. 39 of 2016)

BONIFACE LINUS.....APPELLANT

VERSUS

VENANCE BUTINARESPONDENT

JUDGEMENT

10/10 /2018

T. M. MWENEMPAZI, J.

The appellant herein named is appealing against the judgement of the District Court of Ngorongoro (Hon. D.S. Nyakunga-SDRM) delivered on the 1st March, 2017 at Loliondo which dismissed his appeal and upheld the decision of the Primary Court of Digodigo which convicted with the offence of stealing cattle contrary to section 265 and 268 of the Penal Code, Cap. 16 R. E. 2002. The appellant was sentenced serve a term of five years imprisonment. The appellant has filed three grounds of appeal as follows:

1. That, the District Court erred in law and in fact when it held that the prosecution had proved its case, failing to understand that in law, proof of an offence in criminal cases is beyond reasonable doubt.

2. That, the District Court erred in law and in fact when it failed to realize that the evidence on record was too short.
3. That, the District Court erred in law and fact by shifting a burden of proof to the accused person(appellant).

In the District Court of Ngorongoro the appellant raised three grounds of appeal which prompted the Hon. Senior District Resident Magistrate to call for lower(trial) Court records. He recorded his reasoning as follows: -

“By looking at the evidence which was given at the trial Primary Court, the appellant failed himself to exonerate from the offence he was being charged with. The Prosecution witness claimed at the Primary Court that the appellant was the one who sent them to the place where he did sell the said goat. When he was given chance by the court to challenge the prosecution testimonials by cross examining them the appellant said he had no question to ask that means that what were being said by the respondent and his witness was the truth.”

At the hearing, the appellant was unrepresented. The respondent was absent. So, the appeal was uncontested. The appellant submitted that during trial the prosecution did not prove the offence of stealing goat. The Primary Court magistrate convicted and sentenced him without there being any exhibit in court. The complainant failed to prove that the appellant was the one who stole a goat. The appellant as he was submitting an appeal himself had this to state: -

“Nobody saw me stealing. It was said that I stole and sold the goat to somebody. That person was not brought to testify. It weakened the prosecution case. The said goat was not tendered as an exhibit.”

The appellant then prayed that the judgement of the be quashed and sentence set aside and that he should be released and set free.

In the District court, the appellant coached his grounds of appeal to blame his father and witnesses that they framed him because he has a dispute with him concerning a farm. That his father and others wanted him to be incarcerated so that they use and enjoy what the appellant has acquired in his endeavor to collect wealth.

I have read the record of the Primary Court and the District Court; proceedings and judgements of the respective courts. The appellant(accused) was arraigned in the trial court on the 1st November, 2016. The offence is said to have been committed on the 24th July, 2016. The appellant was present in court during hearing of the prosecution case. He heard what was being testified. It could not be said that he was taken by surprise that he could not dispute what witnesses were testifying. Clearly, Venance Butwa testified that they caught the appellant, questioned him, the appellant admitted to have stolen the missing goat and he sent them to the person to whom he had sold it. The appellant(accused) handed it back to the owner. Similar testimony was tendered by Sarian Sarian as SM2. In addition to the testimony, the latter prayed to tender the said goat as an exhibit. No objection was raised by the appellant. Thus, it was admitted as exhibit P1. Under the circumstance, prosecution witnesses were led by the appellant himself. Otherwise, they couldn't know for sure that the appellant is the one who stole and sold. The appellant never disputed on that.

As such, the prosecution case was proved by the appellant himself though testified by the prosecution witnesses who were taken by the appellant to where he had sold. There, he gave them the stolen goat. It is immaterial that the evidence was short. Nowhere in law evidence is required to be long. What matters the

content of the testimony should display the truth of really what happened when the crime was being committed. I don't have reasons to fault the finding of the courts below and therefore the District Court was right to uphold the decision of the trial court. For the reasons above, this appeal fails and it is accordingly dismissed in its entirety.

It is so ordered.

SGD: T. M. Mwenempazi

JUDGE

10TH OCTOBER, 2018

I hereby certify this to be a true copy of the original



J.F. Nkwabi
J.F. NKWABI
DEPUTY REGISTRAR
ARUSHA 01/11/2018