



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT KISUMU

CRIMINAL APPEAL 48 OF 84

DAVID OMUSE ODERA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from conviction of the High Court of Kenya at Kakamega (Gicheru J) dated 29th November 1983 in Criminal Appeal No 372 of 1983)

JUDGEMENT OF THE COURT

When David Omuse Odera, the appellant therein, appeared before an acting Resident Magistrate at Busia on 27th October 1983 and had the charge of stealing stock contrary to section 278 of the Penal Code read and explained over to him he pleaded guilty by admitting that he stole 2 bulls of Erneyo Ojuma. He confirmed his plea by accepting as true the facts narrated by the prosecution. He, was, therefore, properly convicted of the offence and sentenced to the mandatory statutory minimum sentence of 7 years' imprisonment and ordered to receive 5 strokes of corporal punishment. On 29th November 1983 Mr Justice Gicheru summarily dismissed Omuse's appeal to the High Court. He has now further appealed to this court on the grounds that he in ignorance and presumable therefore, innocently, purchased the two head of livestock at a public auction and was given a receipt which got lost; he is a polygamist with a very large family of ten members who depend on him as the sole bread winner, he is a first offence and has decided to reform and the sentence is harsh and excessive. He asks this court to quash his conviction and either acquit either him or place him on probation.

The grounds of this appeal in the High Court were that he bought the cattle from his neighbour without knowing that they were stolen and that the sentence imposed was too excessive, more so as the long imprisonment will adversely affect his family to the extent that his children will not get education.

We note that in his plea before the subordinate court and even in mitigation the appellant did not raise the point of buying the two bulls from the unnamed neighbour as he alleges in his grounds of appeal to the High Court. This is an after thought and although his appeal should correctly, have been admitted to hearing in view of that ground, no court would have accepted his belated explanation in the light of his unequivocal plea of guilty to the charge of stock theft. No purpose would, therefore, be served by sending back this appeal to the High Court for admission for hearing.

The appellant's plea of guilty was unequivocal and as such no appeal lies against the conviction: see section 348(1) of the Criminal Procedure Code.

As to the sentence the offence of stock theft is punishable with imprisonment with hard labour for a term of not less than seven and not more than fourteen years together with corporal punishment. In so far as the sentence passed on the appellant did not include an order for hard labour as required by Section 278 of the Penal Code it is unlawful.

For the reasons stated the appeal on conviction is dismissed, but we alter the sentence only to the extent that the appellant is sentenced to seven years' imprisonment with hard labour. The order for corporal punishment remains the same. Those shall be the orders of this court.

Dated and delivered at Kisumu this 19th day of June 1984.

A R W HANCOX

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JUDGE OF APPEAL

Z R CHESONI

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AG JUDGE OF APPEAL

J O NYARANGI

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AG JUDGE OF APPEAL

I certify that this is a true copy of the original

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