



**Okuto alias Denoh v Republic (Criminal Appeal E027 of 2024)  
[2024] KEHC 13129 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13129 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E027 OF 2024  
KW KIARIE, J  
OCTOBER 30, 2024**

**BETWEEN**

**DENNIS ONYANGO OKUTO ALIAS DENOH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. E099 of 2024 of the Principal Magistrate's Court at Ndhiwa by Hon. B.W. Murangasia – Resident Magistrate)*

**JUDGMENT**

1. Dennis Onyango Okuto, alias Denoh, the appellant herein, was convicted of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code.
2. The particulars of the offence were that on the night of the 18<sup>th</sup> and 19<sup>th</sup> day of December 2023, at Ratanga Primary School, Central Kwabwai location, Ndhiwa Sub-county of Homa Bay County, jointly with others not before the court, broke into the staff room and stole two dozen of dustless chalk and thirty-six exercise books all valued at Kshs. 6960, the property of Ratanga Primary School.
3. The appellant was sentenced to five years' imprisonment. He has appealed against the sentence. He was in person. He contended that he was sentenced to serve eight years for burglary, eight years for stealing, eight years for breaking and stealing, and five years for handing stolen property. He requested that the sentences run concurrently.
4. The state opposed the appeal, arguing that the conviction and sentence were proper.
5. This is the first appellate court. As expected, I analyzed and evaluated all the evidence before the lower court afresh, concluding while considering that I neither saw nor heard any of the witnesses. I will, therefore, be guided by the celebrated case of Okeno vs Republic [1972] E.A 32.



6. The appellant either misunderstood the sentence or deliberately misled the court. There was only one count in this file and an alternative charge. The trial magistrate did not make a finding on the alternative charge or sentence him.
7. The appeal is therefore dismissed.

**DELIVERED AND SIGNED AT HOMA BAY ON THIS 30<sup>TH</sup> DAY OF OCTOBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

