



**Republic v Odongo (Criminal Appeal E36 of 2023)
[2024] KEHC 15042 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E36 OF 2023
JR KARANJA, J
NOVEMBER 27, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

TOBIA ODERO ODONGO APPELLANT

JUDGMENT

1. The Appellant Ronald Kipkemoi Kibet also known as Robert Langat appeared before Principal Magistrate at Kericho facing a charge of Burglary and Stealing contrary to Section 304 (2) and Section 296 (b) of the Penal Code.
2. It was alleged that on the night of 26th/27th June, 2022 at Duka Moja Village Kericho East within Kericho county, the Appellant jointly with others broke and entered the dwelling house of Mercy Muthoni with intent to steal and did steal from therein a T.V. Set make Samsung 65” valued Ksh 117,768/=, a home theater music system make LG valued at Ksh 47,000/=, a mobile phone make Samsung A6 valued Ksh 35,000/= and a 13 kg total gas cylinder valued at Ksh 15,000/=, all valued at Ksh 214,768/= the property of the said Mercy Muthoni.
3. After pleading not guilty to the charge, the Appellant was tried convicted and sentenced to seven (7) years imprisonment. Being dissatisfied with this outcome, the Appellant filed the present appeal on the basis of the grounds set out in the petition of appeal dated 14th April, 2023.
4. Generally, the Appellant complains that he was convicted on the basis of evidence which was insufficient, inconsistency contradictory, uncorroborated and incredible thereby rendering the conviction improper and unsafe.

The hearing of the appeal was by oral submissions with the Appellant appearing in person while the state/Respondent was represented by the learned prosecution counsel Mr, Karanja who opposed the appeal.



5. In his submissions, the Appellant reiterated his grounds of appeal and added that the investigating officer in the case did not conduct proper investigations and in the process arrested and released the most possible suspect in the matter. The Appellant urged this court to allow the appeal.
6. The learned prosecution counsel submitted that the evidence adduced against the Appellant was sufficient and credible in showing that it was the Appellant who committed the offence. He further submitted that the sentence imposed upon the Appellant was lawful and called for the dismissal of the appeal.
7. Having given due consideration to the appeal and the rival submissions, the duty of this court was to re-visit the evidence and draw its own conclusion bearing in mind that the trial court had the benefit of seeing and hearing the witnesses (see, Okero vs Republic (1972) EA 32). In that regard, the evidence by the five (5) prosecution witness and that of the Appellant in his defence was duly considered by this court.
8. It was clear from the evidence that the commission of the offence was not disputed. The complainant Mercy Muthoni (PW1) confirmed as much when she stated that her house was broken into by the breaking of a kitchen door and smashing of a glass pane. In the process, her electronic house hold items were stolen together with a mobile phone and a gas cylinder. She could not tell who stole the items.
9. After reporting the incident to the police, the complainant was later called to the Kericho police station to identify some recovered stolen items. She was able to identify her stolen TV Set and home theater which were photographed and released to her.
10. The occurrence of the offence having not been a disputed factor, the issue that presented itself for determination was the identification of the offender and/or offenders. In his defence, the Appellant denied the offence and stated that he was arrested by PC Kefa (PW5) and taken to the police station where he was held for five (5) days before he was charged with the present offence following allegations by Clinton Momanyi (PW4) that he (Appellant) had sold him (PW4) the complainant's stolen TV and home theatre which had been recovered and kept at the police station.
11. The Appellant thus implied that he was implicated with the present offence by Clinton (PW4). Indeed, PC Kefa (PW5) stated that the complainant's recovered items were found in possession of Clinton who alleged that he purchased them from the Appellant.
Clinton, testified that he deals in gas cylinders and that the Appellant was introduced to him by a delivery man called Kimalel who apparently was Frankline Kipkurui Cheruiyot (PW2).
12. Franklin (PW2) testified that the Appellant was his customer and had told him that he intended to move house and had a home theatre for sale. He (PW2) that took Clinton (PW4) to the Appellant's house where the two negotiated on the sale of the home theatre.
13. Clinton, testified further that he purchased the home theater from the Appellant for 15,000/= which he paid via mobile money transfer (M-pesa). This was confirmed by Frankline (PW2) and by records from the mobile phone provider (P. exhibit 5 and 7). It was also indicated by Clinton (PW4) that he also purchased the complainant's stolen TV from the Appellant at a purchase price of Ksh 80,000/= of which he paid Ksh 66,000/=.
14. The police investigation by PC Danson Mwangi (PW3) and PC Kefa Chekala (PW5) generally led to the recovery of the stolen items from Clinton (PW4) and determined that he (PW4) was an innocent purchaser of the stolen property after being satisfied with his explanation that the property had been purchased from the Appellant.



15. In its totality the prosecution evidence against the appellant shattered and disproved his defence that he was not the burglar and that he was implicated by Clinton (PW4) due to some debt owed to him (PW4) by him (Appellant) amounting to Ksh 14,000/=
16. Although there was no direct evidence of identification against him, the fact that the Appellant was found to be the actual seller of the stolen property to Clinton (PW4) was sufficient and credible circumstantial evidence to link him to the offence as the actual burglar.
17. The conviction of the Appellant by the trial court was therefore based on sound credible evidence and is hereby affirmed to the extent that the preferred grounds of appeal in that regard (i.e grounds one (1) two (2) and three (3) are unsustainable and dismissed.
18. On sentence, the seven (7) years imprisonment meted out against the appellant was lawful and rather lenient considering that the trial court did not impose sentence on each of the two limbs of the offence as should have been done. In sum, this appeal is devoid of merit and is hereby dismissed in its entirety.
19. Orders accordingly.

HON. J.R KARANJAH

JUDGE.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER, 2024.

In presence of;-

Appellant;- Present in person

Mr. Karanja state counsel.

