



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO 80 OF 2017**

**JAMES LONGOCIA EKWOM.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from original Sentence dated 14/07/2017 in Nanyuki CM Criminal Case No 657 of 2016 – L. Mutai, CM)***

**J U D G M E N T**

1. The Appellant herein, **JAMES LONGOCIA EKWOM**, was convicted of the charge in count II – that is, school breaking and committing therein a felony contrary to **section 306(a)** of the **Penal Code**. It was alleged in the particulars of the offence that on 07/02/2016 at Nyange Secondary School in Nyange Village within Nyeri County, jointly with his co-accused and others not before the court, he broke and entered the school administration office and therein stole the various items listed, all valued at KShs 96,500/00, the property of the said school. He was acquitted of the charge in Count 1 (**robbery with violence** contrary to Section 296(2) of the Penal Code). His co-accused was acquitted of both counts. There was an alternative charge of **handling stolen goods** contrary to section 322(2) of the Penal Code.

2. The Appellant was sentenced to serve seven (7) years imprisonment. He has appealed against both conviction and sentence. In his handwritten amended grounds of appeal he has complained as follows (appropriately re-phrased by the court) –

- i. That the evidence of recovery of the recently stolen goods from alleged possession of the Appellant was uncorroborated.**
- ii. That in any event the recovery was not proper in that the house from which the goods were recovered was illegally opened.**
- iii. That the charge was defective.**
- iv. That there was no corroborative evidence that the house from which the goods were recovered was rented by the Appellant.**
- v. That the trial court failed to consider the Appellant’s defense given in the form of sworn evidence by himself and his two witnesses.**
- vi. That the Appellant’s right to a fair trial under Article 25(c) of the Constitution was violated.**
- vii. That it was not proved that the “James” from whom the stolen goods were recovered was the Appellant.**

3. The Learned prosecution counsel supported the conviction. He submitted that the Appellant was convicted upon ample and sound evidence. As for the sentence, learned counsel submitted that the same was richly deserved as the Appellant was not a first offender.

4. I have considered the Appellant’s submissions, handwritten and oral, as well as those of the learned counsel. I have also read the record of the trial court in order to evaluate the evidence placed before that court and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however that I neither heard nor saw the witnesses testify, and I have given due allowance for that fact.

5. The Appellant was convicted upon the doctrine of **unexplained possession of recently stolen goods**. The evidence of recovery was given by **PW3** (CI. Robert Kipkoech), **PW4** (PC. Zio Wambora) and **PW5** (Chief Lazarus Mugo of Lusoi Location, Kieni). Upon his arrest the Appellant led these officers to a house which he said was his. He opened it and from therein various items were recovered which were positively identified by **PW1** (Peter Mungai, Head-Teacher of Nyange Secondary School) as some of the items stolen from his school when it was broken into in the night of 07/02/2016. The recovery was on the day following the theft, 08/02/2016.

6. The Appellant never gave any satisfactory explanation (or at all) of his possession of very recently stolen goods. Having been found in possession of these goods, without explanation, the trial court was entitled to reject the Appellant's defense (sworn as it was, and with witnesses) that he had already been arrested on 06/02/2016 and could thus not have been the thief of goods stolen on the night of 07/02/2016. His witnesses were not clear on the date of his alleged arrest. The **Occurrence Book** of **Naromoru Police Station** was produced in court at the behest of the Appellant. It showed that the report of the theft was made on 07/02/2016 at about 9:00 am, and the Appellant was arrested on 08/02/2016.

7. It is therefore not true that the trial court did not consider the Appellant's defense. It did so and properly rejected it on account of the overwhelming evidence of recovery from him of the very recently stolen goods.

8. The Appellant did not advance any argument on the ground of appeal that the charge upon which he was convicted was defective, either in form or substance, and I do not find it to be so. He also did not argue his complaint that his constitutional right to a fair trial was violated.

9. I do not find any merit in the appeal against conviction and the same is hereby dismissed. The Appellant was properly convicted upon the doctrine of unexplained possession of recently stolen goods. The conviction is safe.

10. As for sentence, the Appellant admitted before the trial court that he had one relevant previous conviction. He was not a first offender and richly deserved the sentence of seven (7) years imprisonment that he got.

11. The Appellant's appeal is hereby dismissed in its entirety. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 23<sup>RD</sup> DAY OF JULY 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 25<sup>th</sup> DAY OF JULY 2019**