



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 35 OF 2017**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**JOHN CHACHA MARWA.....ACCUSED**

**JUDGMENT**

1. The Appellant herein, **JOHN CHACHA MARWA** was charged with the offence of Burglary contrary to Section 304 (2) and Stealing contrary to Section 279 (b) of the Penal Code.

The particulars were that ‘On the night of 28<sup>th</sup> January, 2016 at Uriri shopping centre Uriri Sub – County in Migori County within the Republic of Kenya jointly with others not before Court broke and entered the tailoring shop of **JOHN OLUOCH ODERO** with intent to steal and did steal from therein assorted clothes valued at Kshs. 18,600 the property of the said **JOHN OLUOCH ODERO**’.

2. On denying the charge a trial was held where four (4) witnesses testified. They were **John Oluoch Odero** who testified as **PW1**. He was a tailor and ran his business at Uriri Township and whose premises were broken into and assorted items stolen. **PW2** was **No. 232698 C. I. David Nyakundi** who was the OCS of Uriri Police Station. He had taken his trousers for repair to **PW1** which was stolen when **PW1**’s premises was broken into. **David Okoth Otieno** was **PW3**. He was also a tailor who ran his business at Uriri Township just like **PW1**. His premises were also broken into in the same night with that of **PW1**. The Investigating Officer **No. 67968 Corporal Fidelis Kisimbai** from Uriri Police Station testified as **PW4**.

3. The undisputed facts were that **PW1**’s and **PW3**’s business premises at Uriri Township were broken into and assorted items stolen therefrom on 28/01/2016. They reported the matter to Uriri Police Station and on 10/02/2016 **PW2** was called by his Counterpart from Awendo Police Station and informed of assorted suspected stolen properties which the appellant had been arrested with. **PW2** confirmed from his station that there were reports of breaking and asked his counterpart to avail the suspect and the properties to Uriri Police Station. That was done.

4. On receipt of the goods and the suspect, **PW2** was shocked to see the suspect (now appellant) wearing the stolen **PW1**’s trousers which **PW2** had taken to **PW1** for repairs and which was as well stolen alongside other clothes. **PW2** confirmed the trouser by some buttons he had put at some strategic areas. **PW1** was called and conformed that the trouser which the suspect wore was among the items stolen from his premises which had been brought by **PW2** for repair. The appellant disowned the ownership of the trouser which he wore at the time of his arrest.

5. The appellant was then placed on his defence and gave unsworn testimony. He stated that he was travelling from Migori to Awendo in a vehicle which was stopped at a road blocked and when the passengers were told to confirm their luggage one of them ran away and the police told him to carry the luggage to the police car and headed to Uriri Police Station where **PW2** stated that the trouser he wore looked like his.

6. The appellant was convicted vide a judgment that was delivered on 01/03/2017 on both limbs of the charge and sentenced to two (2) years imprisonment.

7. The appellant challenged the conviction and sentence after he had served one half of the sentence. His appeal was admitted with the leave of this court on 19/10/2017 but still delayed filing the appeal upto 04/12/2017. Be that as it may the appeal was heard and the appellant relied on his written submissions filed on 19/04/2018. He contended that it was not proved that he was the assailant.

8. I have carefully perused the record and I am satisfied that the appellant was convicted to the theft and burglary in issue. The trouser which he wore at the time of arrest belonged to **PW2** and had been stolen from **PW1**’s premises during a break in. The appellant did not even contend ownership of the very trouser he wore. In fact the appellant is very lucky that he was not charged with a more serious offence of handling suspected stolen property. I therefore do not find any merit in his appeal against conviction.

9. On sentence, the term of two (2) years was reasonable in the circumstances. The appellant has by now served around three – quarters of the sentence. In the spirit of decongesting the prison facilities, I hereby admit the appellant to Community Service for the remainder of his term to be supervised by the relevant Officer in – charge of Uriri Sub-County. Save for the review of the sentence, the appeal is hereby dismissed.

Orders accordingly.

**DELIVERED, DATED and SIGNED at MIGORI this 28<sup>th</sup> day of June 2018.**

**A. C. MRIMA**

**JUDGE**

**Judgment delivered in open Court and in the presence of: -**

**John Chacha Marwa the Appellant person.**

**Miss Atieno, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.**

**Evelyne Nyauke – Court Assistant**