



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 36 OF 2017

ARON KIPKOECH KORIR.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence on Sotik PM's Court CR Case No. 770 of 2018)

JUDGMENT

The appellant was sentenced to six years imprisonment for the offence of handling stolen property C/S 322(2) of the penal code. He was acquitted on the two main counts of burglary C/S 304(2) and stealing C/S 279(b) of the penal code.

The particulars on the alternative charges of handling stolen property are that on the 30th day of July 2017 at Ndanai Trading Centre in Sotik Sub County within Bomet County otherwise than in the course of stealing dishonestly retained a mattress 2 blankets 3 jackets, a pair of shoes, 2 t-shirts and a shirt knowing or having reason to believe them to be stolen goods. On the 2nd count of handling stolen goods, the particulars are that on the 30th day of July 2017 at Ndanai trading centre in Sotik Sub County, otherwise than in the course of stealing dishonestly retained four long trousers 2 t-shirts, a pair of shoes, D-light, a radio and a bag knowing or having reason to believe them to be stolen goods.

This is the first appellate court. It has the duty of evaluating and considering a fresh the evidence on record so as to arrive at its own conclusions but also bearing in mind that it did not have the opportunity of observing the demeanour of the witnesses.

Brief facts

The applicant had been employed by the complainant as a herdsboy. Complainant's house was broken into at night and household goods went missing. They commenced a search that night. At around 3.00 a.m they recovered a mattress in the bush. The following day at 6.00 a.m they received information that it is the accused who had stolen the goods.

They proceeded to the nearby bus stop found the accused, he had with him a mattress that belonged to the complainant's brother and 4 long trousers belonging to the complainant and a pair of shoes belonging to the complainant. When he saw the complainant, he ran away but was arrested with the help of members of public.

The matter was reported at Ndanai Police Station. The Accused had been taken there by members of public. He had been beaten. He was first taken for treatment.

In his defence the appellant testified that on the 30th day of July 2017 he was at his place of work when the complainant who is his employer called him saying that he wanted to pay him his salary. Upon going to where he was, he screamed and members of public went and beat him up. The learned trial magistrate found that the Accused's defence was a mere denial and was satisfied that he was found at a bus stage with the stolen items with a view of transporting them. The items which were recovered from the accused were produced in court and the two complainants identified them.

I am satisfied the appellant handled stolen goods. The conviction was safe. As for the sentence the learned trial magistrate ordered that it runs consecutively. The recovery of stolen goods was on 30th July 2017. It was one transaction.

The consecutive sentence is altered and substituted with a concurrent one.

The upshot is that the appellant will serve an imprisonment term of three years instead of six years.

The appeal succeeds to that extend only.

Judgment delivered dated and signed this 21st day of December of 2018 in the presence of learned counsel for the prosecution Mr. Wawire appellant in person present court assistant Rotich.

M. MUYA

JUDGE

21/12/2018