



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO.8 OF 2017

BETWEEN

THOMAS OTIENO OTIENO....APPELLANT

AND

STATE.....RESPONDENT

(An appeal from original conviction and sentence of the CM's Court at Homa Bay

in Criminal Case No.85 of 2015 dated 14.10.2016 – Hon. P. Mayova, SRM)

JUDGMENT

1. The appellant **THOMAS OTIENO OTIENO** was convicted on a charge of burglary and stealing contrary to **Section 304 (2)** as read with **Section 279 (b)** of the **Penal Code** and sentenced to serve 3 years on the first limb and 4 years on the second limb.
2. The particulars of the charge stated that on the night of 24th/25th December 2014 in **KOTHITHA** village in **HOMA BAY**, he broke into the house of **BONIFACE NYAILA ACHIENG** and stole a laptop, school bag containing personal documents, warret, ID card, temporary card for **EQUITY BANK**, University Text Book all to the total value of Kshs.28,000/= being the property of **BONIFACE NYAILA**. He pleaded guilty to the charge after the prosecutor had narrated the facts to Court that on 24/12/2014 at about 8.20 p.m., **BONIFACE** locked his house securely and went for supper at his father's house. He left at 11.00 p.m. and found his door wide open and the padlock missing. He checked the house and realized that the aforementioned items were missing.
3. The complainant made a report to Homa Bay police station and on 26/11/2015 he got information that some of the stolen items had been recovered.
4. He proceeded to the police station to find his I/d Card and that of his mother had been recovered from the appellant's house. The other items were not recovered. The appellant confirmed that the facts were correct.
5. Upon calling for a pre-sentence report, the trial court noted that the appellant was not a first offender, having been convicted several times for several offences and had served prison sentences many times, so he was ordered to serve 3 years imprisonment on the 1st limb and 4 years imprisonment on the 2nd limb.
6. The appeal as on sentence only and the appellant made oral submissions requesting that the sentence be reviewed. Mr. Oluoch on behalf of the State urged the court not to interfere with the sentence pointing

out that the appellant was not a first offender and had been convicted and sentenced to a prison term on a similar charge in **HOMA BAY CRIMINAL CASE NO.85 OF 2015 – REPUBLIC –VS- THOMAS OTIENO OTIENO ALIAS OGOGA.**

7. I have perused the aforementioned file and confirm that is the correct position.

8. The pre-sentence report dated 11/03/2015 by **JOSEPH MAYIEKA** (the Probation Officer) which pointed out that the appellant confirmed he had been convicted and sentenced to serve prison sentences in three other separate instances and due to this he changed his name from **WILSON OTIENO OTIENO** alias **ALELA** to **THOMAS OTIENO OTIENO** alias **OGOGA.**

9. The victim lamented that the appellant had stolen data for his course work at the University which was contained in the lap top. The community where he lived did not have kind words for him, nor did his parents who all connected him to criminal activities within the area including muggings at Shauri Yako estate, and Murram – Marindi area.

10. I think the trial magistrate duly considered all these factors and aptly meted a sentence which was well deserved. I find no reason whatsoever to interfere with the sentence passed.

11. Consequently the appeal has no merit and is dismissed.

Delivered and dated this 29th day of June, 2017 at Homa bay

H.A. OMONDI

JUDGE