



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL APPEAL CASE NO. 112 OF 2015

(Being an appeal arising from conviction and sentence in Kitale Chief Magistrate's Court in criminal case No. 2081 of 2015 delivered by P. Biwott Senior Principal Magistrate on 14/10/2015)

FELIX KIPLIMO KIPROTICHAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. **Felix Kiplimo Kiprotich** “the appellant” was charged with the offence of **burglary contrary to section 304(2) and Stealing contrary to section 275 of the penal code**. The particulars were that the appellant on the night of 5th March 2015 jointly with another broke the house one **Phanice Chebet Hamisi and stole one mattress, one blanket, two bed sheets, one curtain, one suit case, one bed cover, five clothes, a birth certificate, her parent's copies of Id Card** all valued at kshs 14,000/- the property of **Phanice Chebet Hamisi**.

2. He faced an alternative count of **handling stolen properties contrary to Section 322 (1) of the penal code**. The particulars being that on the 17th day of May 2015 at **Trans Nzoia County** you were found with **one suit case and two bedsheets and a bed cover** other than in the course of stealing you had reasons to belief that the properties were stolen.

3. He denied the charges and the matter proceeded to full hearing with the prosecution calling five (5) witnesses. The appellant gave a sworn statement of defence and called no witness. He was found guilty and convicted on the main count and sentenced to 4 years on each limb.

4. The appellant was aggrieved with the judgment and filed this appeal raising the following amended grounds of appeal.

i) That the sentence delivered on 14th October 2015, four years in prison was too harsh despite prosecution report that the appellant was a first offender.

ii) That the learned trial magistrate never considered his mitigation that he was young and had his siblings depending on him due to the fact that his father was in custody from an offence of homicide.

iii) That in reality having been found in possession of the stolen items, he had purchased them from his co-accused.

iv) That having realized the mistake and crime he had committed, he was so sorry, and felt remorseful and prayed that the court finds him thus and grant forgiveness.

5. When the appeal came for hearing the appellant furnished the court with written submissions. I have gone through them and all he is asking for is for the court to have mercy on him and reduce his sentence.

6. The state through Mr Kakoi opposed the appeal, He submitted that the prosecution case proved that PW1's house was broken into and her items stolen. That some of the stolen items were recovered from the appellant and PW1 established ownership. He argued that the 4 year sentence should not be interfered with.

7. A summary of the case is that PW1, lived in a rental house at Kipsongok Centre. On 5th March 2015 she went to Eldoret. She later received a call from her aunt Mary (pw4) informing her that her house had been broken into, ransacked and was empty. She informed her land lord (PW2) of the incident by phone. PW2 went to the house and confirmed the report. PW1 came back and confirmed the report, too.

8. A report was made at Kitale Police station and to the chief . All the stolen items were valued at Kshs 18,000/-. A few of the items namely Exhibit 1-4 were recovered. PW3 the assistant chief confirmed that the appellant was found with a suitcase (Exhibit 2), blanket and bedsheet (Exhibit 3 & 4). These items were positively identified by PW1.

The appellant was arrested together with the exhibits and taken to the police station.

9. **PW5 No. 83755 CPL Jentrix Naliaka** is the investigating officer. She stated that PW1's case had been reported. The appellant was one of the suspects arrested, by the area chief. Exhibits were also brought. The appellant was found with Exhibit 2, 3 & 4 and was then charged.

10. The appellant gave a sworn statement in his defence and called no witness. He denied the charges .

11. This is a first appeal. This court has a duty to re evaluate the evidence and come to an independent conclusion. I also bear in mind that I did not see nor hear the witnesses. ***See Okeno V Republic 1972 E.A.; Kinyanjui V Republic [2004] KLR 364.***

12. I have considered the evidence on record together with the grounds of appeal and the submissions. There is no dispute that the complainant's house was broken into at night and items stolen. PW1, PW2 and PW4 have confirmed going to the house and seeing what happened. The appellant was found in possession of some of the stolen items (exhibit 2,3, and 4). PW1 identified her recovered items. In actual fact the appellant is not contesting the conviction.

14. Besides that I am satisfied that PW1's house was broken into, and items stolen some of which were found with the appellant who has not offered any plausible reason for being in possession of them. They were recovered within a short time after the burglary. So he is considered to be the thief or one of the thieves.

(See Arum V Republic [2006] 1 KLR 233.

15. The conviction is therefore confirmed. The appellant was sentenced to 4 years imprisonment on each limb of the offence. Its noted that some of the stolen items were never recovered. All the stolen items were valued at Kshs 14,000/-. After considering all the circumstances of this case I find that the appellant must have learnt his lessons in prison. He has been in prison for almost two years now. I will reduce the sentence.

16. The appeal therefore succeeds on sentence only. The sentence of 4 years is set aside. I substitute it with 36 months imprisonment on each limb, from the date of conviction. Sentences to run concurrently.

Orders accordingly.

Delivered, signed and dated on 28th day of August 2017 at Kitale.

H. ONG'UDI

JUDGE

In the presence of:

M/S Kakoi for the Respondent

Appellant present

Kirong- court Assistant

Court: Judgement delivered in open court.

H. ONG'UDI

JUDGE

28/8/2017