

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 137 OF 2013

NICHOLAS OUMA OMOLLO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

**[Appeal from Original Conviction and Sentence from Senior Principal Magistrate's Court : D.
CHEPKWONY – SPM at Nyando**

in Criminal Case No.359 of 2012.]

JUDGMENT

The appellant was charged with the offence of breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code . The particulars of the offence are that on the night of 21st and 22nd March 2012 at Boya Centre in Kebongo Sub-location in Nyando District stole assorted items valued at Kshs. 77,680/= which belonged to one Charles Omondi Odwar.

The appellant was equally charged with handling stolen property contrary to Section 322(1)(2) of the Penal Code.

The appellant was convicted and sentenced to 7 years imprisonment hence this appeal.

The Petition of appeal dated 6.2.2013 is basically on mitigation. The appellant is praying for forgiveness as he was remorseful.

Briefly the facts of this case are that the complainant, PW1, **Charles Omondi Odwar** closed his shop at around 6.30 p.m on 21/3/2012. At around 6.30 a.m he was called by the landlord who informed him of the break in his premises . He went to the scene and saw what had transpired. He then reported to the police, listing all the items that had been stolen.

On 11/4/2012 he was called by Tom Ogallo PW2, a member of the community police to identify some items found in some home. He went to the scene where he met the appellant. Upon searching , they found the stolen bicycle which he identified together with other assorted items. They were found in the appellant's mother's house who was not present at the time.

The appellant was then arrested and taken to Boya Police station where PW3 Laban Anunda carried out the investigations. He later produced the various assorted recovered items which were produced as evidence in court.

The appellant gave unsworn evidence denying the charge. He however confirmed that the stolen items including the bicycle were recovered in his presence at his mother's house.

The State opposed the appeal arguing that the appellant was an habitual offender and that putting him behind bars would help him reform. In any case the State argued, the sentence was proper and not unlawful.

Having perused the proceedings as well as heard the oral submissions by the appellant and the learned state counsel I do not find any sufficient reason to allow the appeal. The same is proper in law

and this court can only interfere if it is illegal or inconsistent with the law. In other words the court shall interfere with the sentence if the trial court considered such extreneous matters in arriving at its decision. I find that even at the mitigation level the appellant was economical with the truth by alleging that he was an orphan yet his mother testified against him. He did not deny that he served another sentence for a similar offence of stealing.

The appeal is hereby dismissed.

Dated, delivered this 25th day of May 2015

H. K. CHEMITEI

JUDGE