

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 4 OF 2014

JOHN NJOROGE NJANE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**(Appeal against Conviction and Sentence in Kigumo SPM Criminal Case No 488 of 2012 - B
Khaemba, SPM)**

J U D G M E N T

1. The Appellant **John Njoroge Njane** was convicted after trial of **house- breaking** and **stealing** contrary to **sections 304(1)** and **279(b)** of the **Penal Code**. He was sentenced to six (6) years imprisonment on each limb, the sentences to run concurrently. He has appealed against both conviction and sentence. Then main complaint disclosed by his grounds of appeal and written submissions is that the evidence placed before the trial court was not sufficient to found the convictions. He complains also that the sentence was "stiff".
2. Learned Prosecution Counsel for the Respondent supports both conviction and sentence.
3. I have read through the record of the trial court in order to evaluate for myself the evidence placed before it. This indeed is my duty as the first appellate court. I have however, given due allowance for the fact that I did not myself see and hear the witnesses testify.
4. On returning from her shamba in the afternoon of the material day the complainant (PW1) found her kitchen broken into and the keys to her main house missing from where she had kept them. When she went into the main house she found various items missing, obviously stolen therefrom. She reported the matter to the local Assistant Chief and gave him the name of the Appellant who she said had on occasion previously stolen from the house. The Assistant Chief advised her to tell the Appellant to go and see him.
5. The following day the complainant saw the Appellant at his home carrying a sack. He was a neighbour's son. Upon seeing him the Appellant dropped the sack and ran away. The complainant checked the sack and in it she found various items, some of them being those that had been stolen from her house the previous day. Eventually the Appellant was arrested by members of the public and handed over to the police.
6. The complainant positively identified some of her items very recently stolen from her house, and which the Appellant was carrying in a sack. He had ran away upon seeing the complainant. In his unsworn statement given in his own defence, he did not explain how he had come by those items. His statement was only in regard to how he had been arrested.
7. The Appellant was convicted upon good and sound evidence given by the complainant. He did not shake her at all in cross-examination, and her testimony did not require corroboration in law. The trial court properly rejected his defence. The charges against him were proved beyond reasonable doubt.
8. As for the sentences meted out, they do appear to be on the "stiff" side, and were awarded upon the basis that the Appellant was a **repeat offender**. However, there was no proper evidence of any previous convictions placed before the trial court, despite the prosecutor's assertion that he had one previous conviction of stock theft. For this reason I will interfere with the sentence. In doing so I note that the

Appellant was sentenced on 24/12/2012.

9. I will set aside the sentences of six (6) years imprisonment and substitute therefor four (4) years imprisonment on each limb, to run concurrently. To that limited extent only does the appeal succeed. The appeal against conviction is dismissed. It is so ordered.

DATED. SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015