



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO.65 OF 2015

FREDRICK OTIENO OLOO.....1ST APPELLANT

ALPHONCE OTIENO ONUNGA.....2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

**[APPEAL FROM ORIGINAL CONVICTION AND SENTENCE FROM NYANDO SPMS
COURT: D. O. CHEPKWONY -SPM**

IN CRIMINAL CASE NO.43 OF 2015.]

J U D G M E N T

1. The appellants were charged with the offence of Breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code.
2. The particulars are that on the night of 31st and 1st January 2015 at Katito trading centre in Nyakach within Kisumu county, broke and entered a building namely a store of **MESHACK OUMA OWIYO** and committed therein a felony namely theft. 2 crates of bread with rice and lovely lotion, jumbo, Caroline, tip-up and variety of jellies, tooth paste, kiwi, powder, sugar 25kgs, 2 jericans of coking foil, 2 liters and 10 liters valued at kshs.70,000/=.

Count 11 Handling stolen goods contrary to Section 322 (1)(2) If the Penal Code: ALPHONCE OTIENO ONUNGA: On the 8th day of January 2015 at Katito trading centre in Nyakach District within Kisumu county otherwise than in the cause of stealing dishonestly received, retained bar soaps to wit brand ndume, Kibuyu brand, lido brand, 7 box match boxes, 10 pieces, vaseline 100 grams, 2 pieces valoon 250 grams 2 pieces, sure petroleum jelly 100 grams – 3 pieces, sure petroleum jelly 250 grams – 2 pieces, clave petroleum jelly 200 grams – 1 piece, tip-top milking jelly 200 grams – 2 pieces, sawa bathing soap 250 grams – 2 pieces, white dent tooth paste 125 grams- 2 pieces and white dent tooth paste 80 grams – 1 piece, knowing and having knowledge to believe it to be stolen property of **MESHACK OUMA OWIYO**

FREDRICK OTIENO OLOO: On the 8th day of January 2015 at Chabera village in Oyugis sub-county within Nyamira county otherwise than in the cause of stealing dishonestly received, retained, Sure petroleum jellies 50 grams – 2 pieces, valoon jellies 50 grams – 3 pieces, movit 150 grams – 1 piece, vaseline 50 mls- 1 piece, G&G jelly 115 mls – 1 piece, tip-top jelly 600 mls – 1 piece, U&neo jelly 60 grams – 1 piece, Lemonvate 30 grams – 3 tubes and sawa soap 250 grams – 1 piece, knowing or having

knowledge to believe it to be stolen property of **MESHACK OUMA OWIYO**

3. They both pleaded guilty and were convicted on their own plea and sentence to serve 5 years imprisonment each. They both filed their appeal which is basically on mitigation.

4. According to the petition filed on 13.4.15 they pray for leniency and are remorseful. The state opposed the appeal urging that they were both repeat offenders.

5. The provisions of section 348 of the Civil Procedure Code, states as follows:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.”

6. The provisions of section 306(a) of the Penal Code provides for a punishment of upto 7 years. The court rightly imposed a period of 5 years. Clearly the trial court was within the law.

7. However owing to the mitigation of the appellants herein and taking into consideration their age and remorsefulness, I shall interfere with the said sentence by reducing the same from 5 years to 3 years custodial sentence to run from the date of this judgment.

Order accordingly.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF NOVEMBER, 2015

H. K. CHEMITEI

J U D G E