



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL APPEAL NO. 124 OF 2012.**

**EUTYCUS KANGIREMON LOKITO :::::::::: APPELLANT.**

**VERSUS**

**REPUBLIC :::::::::: RESPONDENT.**

*(Being an appeal from the original conviction and sentence of S.J. Saenyi – RM in Criminal Case No. 644 of 2009 delivered on 12th July, 2010 at Lodwar.)*

**J U D G M E N T.**

The appellant, **Eutycus Kangiremon Lokito**, appeared before the Resident Magistrate at Lodwar, charged with office breaking and committing a felony contrary to section 306 (a) of the Penal Code. It was alleged that on the night of 25th/26th September, 2009, at Bishop Mahon Centre, Turkana Central District, the appellant and others broke and entered the office of Peter Kebo, and stole from therein a digital camera, a hand disk, woofers, an Ipad and a generator all valued at Ksh. 37,100/= including cash Ksh. 82,703/= the property of Bishop Mahon.

After a full trial, the appellant was convicted and sentenced to a fine of Ksh. 60,000/= and in default to serve three (3) years imprisonment.

Being dissatisfied with the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds in the petition of appeal filed herein on 14th November, 2012. He appeared in person at the hearing of the appeal and presented written submissions in support of his case. The learned Prosecution Counsel, **Mr. Chelashaw**, opposed the appeal on behalf of the state respondent.

In his oral submissions, the learned prosecution counsel stated that he relied on the evidence on record. That, the appellant was found in possession of property belonging to PW1 after having sold it to PW6. That, the stolen items were recovered from the appellant. That, PW3 and PW5 assisted in the recovery of the items.

The Learned Prosecution Counsel further stated that the doctrine of recent possession applied in this case and contended that the appellant was properly convicted.

Having considered the submissions by both sides, the duty of this court is to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

Briefly, the case for the prosecution was that at the material time, **Peter Kebo (PW1)**, was the manager at the Bishop Mahon Centre, a recreation centre for the youth of Turkana. He closed his office at 8.30 p.m. and left the premises which were guarded by a watchman, **Calistus Lokale Etapal (PW2)**. At about 5.00

a.m., while asleep in his home, he (PW1) was awakened by neighbour and colleague and informed that the centre had been broken into and property stolen from therein. He proceeded to the centre and confirmed the information. He ascertained that electronic items and cash Ksh. 82,703 had been stolen. He reported the matter to the police and investigations commenced.

Later, on the 2nd October, 2009, the complainant (PW1) found one of the stolen items (a camera) with a person called **John Brahano (PW6)** who alleged that it had been taken to him by the appellant for purposes of fetching a buyer. The appellant was arrested. He implicated two other persons who were also arrested and charged together with him.

The appellant and one of his co-accused later led the complainant and **Samuel Lokito (PW3)** together with **Benson Ekeno (PW4)** and the investigating officer, **PC Thomas Mukima (PW7)**, to places where additional stolen items were recovered. One of the places included a house belonging to **Wycliffe Shivasa (PW5)**, where the stolen woofer and its speakers were found having been sold by the appellant's co-accused.

The appellant and his co-accuseds were charged with the present offence after investigations were completed. They all denied the charge.

In his defence, the appellant stated that he was a boda boda (motor cycle taxi) operator and on the 27th September, 2009 was at home when a person called Patrick Lomoe arrived there and offered to sell to him a camera. He accepted the offer and on the following day he made a down payment of Ksh. 1,000/= out of the required Ksh. 3,000/=. He took the camera home with an outstanding balance of Ksh. 2,000/=.

On 30th September, 2009, he took the camera to a photographer who was to sell it at a profit. The camera was sold at Ksh. 3,500/= which was given to him (the appellant) on the 1st October, 2009 and on the 2nd October, 2009, he was to collect an additional Ksh. 2,000/=.

Later, he was accosted by the complainant and questioned about the camera. He mentioned the person who had taken it to him and the two were interrogated before being handed over to the police.

The learned trial magistrate considered all the foregoing evidence and arrived at the conclusion that the prosecution had proved its case beyond reasonable doubt against the appellant and one of his co-accused. In so doing, the learned trial magistrate found that the appellant and one of his co-accused had sold some of the stolen items.

In essence, the learned trial magistrate applied the doctrine of recent possession to find that the appellant was responsible for the offence. Indeed, the learned trial magistrate was correct in applying the said doctrine since there was no direct evidence against the appellant. The evidence linking him to the offence was essentially circumstantial based on the fact that he was in possession of property recently stolen which property he was found to have sold to innocent buyers. A person found in possession of property recently stolen and fails to give a satisfactory explanation of his possession thereof is presumed to be the actual thief.

The appellant did not deny his possession of the stolen camera which was recovered after he had sold it to an innocent buyer. His explanation for his possession thereof did not satisfy the trial court nor has it satisfied this court. To the contrary, the explanation which led to the arrest of a second suspect and recovery of additional stolen items portrayed the appellant as having acted in concert with others to break into and steal from the complainant's office at the Bishop Mahon Centre. Consequently, his conviction by the learned trial magistrate was proper and sound. The sentence meted out against him was lawful but rather lenient for a person who was not a first offender.

All said, this appeal is dismissed for want of merit.

**[Delivered and signed this 21st day of January, 2014.]**

**J.R. KARANJA.**

**JUDGE.**