



**REPUBLIC OF KENYA.**

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

**CRIMINAL APPEAL NO. 1 OF 2012.**

**GEOFFREY MUMO ::::::::::::::::::::::::::::::::::::::: APPELLANT.**

**VERSUS**

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

*(Being an appeal from the original conviction and sentence of H.O. Barasa- SRM in Criminal Case No. 604 of 2011 delivered on 21st December, 2011 at Lodwar.)*

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

The appellant, **Godfrey Mumo**, was convicted and sentenced to consecutive terms of five (5) years and three (3) years imprisonment for the offence of burglary and stealing contrary to section 304 (2) and section 279 (b) of the penal code after a full trial before the Senior Resident Magistrate at Lodwar.

It was alleged that on the night of the 7th August, 2011 at Kenya Power Staff quarters in Turkana Central District, the appellant broke and entered the dwelling house of Allan Limo with intent to steal and did steal from therein two arm chairs, two cushions and three pairs of shoes all valued at Ksh. 14,700/= the property of the said Allan Limo.

Being dissatisfied with the conviction and sentence, the appellant filed the present appeal on the basis of the grounds contained in the petition of appeal filed herein on the 3rd January, 2012.

The appellant appeared in person at the hearing of the appeal and presented written submissions in support of the appeal.

The state respondent opposed the appeal through the learned Prosecution Counsel, **Mr. Chelashaw**.

The Learned Prosecution Counsel submitted that after a tip off, the complainant (PW1) found the appellant in possession of his stolen goods. That, the appellant was identified as the person who took the stolen chairs to a certain lady. That, additional stolen goods including shoes which were sold to PW2 and PW3 were recovered with the help of the appellant. That, the recovery of the stolen goods was witnessed by PW4.

The Learned Prosecution Counsel contended that there was enough circumstantial evidence against the appellant based on the doctrine of recent possession and that the appellant failed to give a proper explanation of his possession of the stolen goods.

The Learned Prosecution Counsel further contended that the appeal on conviction ought to be dismissed but noted that the sentence imposed against the appellant ought to have been ordered to run concurrently.

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

In brief, the prosecution case was that the complainant **Allan Kipruto Limo (PW1)**, woke up on the morning of the 8th August, 2011 to find that an extension part of his house had been broken into and some items including shoes and chairs stolen from therein. He reported the matter to the police and later received a tip-off that some of the stolen items were in a certain house. He went to that house in the company of police officers and found his stolen chairs and cushions.

The occupant of the house at the time was a woman who indicated that the items had been taken to the house by the appellant whom she pointed out. On being arrested, the appellant led the complainant and the police into recovering the stolen shoes.

**Paul Lorir Abongoi (PW2)**, confirmed having purchased part of the stolen shoes from the appellant after the appellant had offered them to him on grounds that he was broke and needed money. He (PW2) purchased the shoes for Ksh. 400/=.

**Lotesiro Ekal Lokwawi (PW3)**, also purchased another pair of the stolen shoes from the appellant.

**CPL. Samson Lengopito (PW4)**, investigated the case and in the process arrested the appellant and witnessed the recovery of the complainant's stolen goods. He eventually prepared the present charge against the appellant.

The appellant denied the offence. His defence was that he worked as a casual labourer and musician and lived with his uncle's wife. He was at her house on the 11th August, 2011 when he took a mat and lay under a tree outside the house. Sleep caught up with him and after a while he was awakened by some people including police officer. They asked for a house belonging to one Losiritangi. Thereafter, the complainant emerged with pair of shoes. He (appellant) declined to take them to Losiritangi but the police officer insisted. He was put inside a vehicle in which the stolen goods were and taken to Lodwar police station. He was placed in the cell, after refusing to take the police to Losiritangi. Later, he was charged in court. He contended that he was confused with the person Losiritangi who was his brother.

From all the foregoing evidence, it is apparent to this court that there was no dispute that the complainant's house was broken into and items stolen from therein in the hours of darkness. The offence was discovered on the morning of the 8th August, 2011 meaning that it was committed on the night of the 7th August, 2011 as indicated in the particulars of the charge. However, the offence was not witnessed by any person. None of the prosecution witnesses indicated that they saw the appellant breaking into and stealing from the house. Therefore, the prosecution had to rely on indirect or circumstantial evidence to link the appellant to the offence. The appellant however, denied any involvement in the offence and implied that he was confused for his brother who was the person responsible for the offence. But, this line of defence was clearly rebutted and discredited by the prosecution evidence through the complainant (PW1) as well as PW2, PW3 and the police officer (PW4).

The complainant and the police officer clearly informed the court that the appellant was the person who took some of the stolen items to a certain house. He was pointed out by a woman found inside the house. The said woman was not called to testify although she was an essential witness. Nonetheless, her absence did not water down the prosecution evidence against the appellant.

Since it was the appellant who took some of the stolen items into the material house, it was safe for the trial court to find that he was in recent possession of stolen property for which he was required to give a satisfactory explanation otherwise be presumed to be the actual thief.

Apart from the items recovered in house, there were other items found with PW2 and PW3 both of whom satisfactorily explained that they had purchased the same from the appellant who therefore was in possession thereof after they were stolen and before being sold to the said witnesses.

Despite being found in possession of the items stolen from the complainant or having been in possession of the said item no sooner had they been stolen, the appellant made no attempt to give a satisfactory explanation of his possession of the said goods either to the police at the time of his arrest or to the court when he was put on his defence. Instead, he denied possession and attributed the same to another person. It was apparent that he did not tell the truth in view of the very strong and credible evidence against him. He was therefore properly convicted by the trial court on the basis of the doctrine of recent possession. This court upholds the conviction.

With regard to the sentence, this court agrees with the learned prosecution counsel that it ought to have run concurrently rather than consecutively since the breaking and stealing were part of the same transaction.

In the upshot, this appeal is dismissed but the sentences imposed against the appellant by the trial court shall run concurrently.

Ordered accordingly.

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

**J.R. KARANJA.**

**JUDGE.**