



**REPUBLIC OF KNEYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL APPEAL NO. 7 OF 2013**

**ABRAHAM MUNIALO WERE ..... APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**(Appeal against conviction and sentence arising from the judgment of [S.N. ABUYA, P.M.] from the original Criminal Case No. 604 of 2012 in Butali Principal Magistrate's Court)**

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

The appellant was charged with the offence of burglary contrary to **section 304(2)** and stealing contrary to **section 279(b)** of the Penal Code. He was also charged with the account of handling stolen property contrary to **section 322(1)** of the Penal Code. He was convicted of the main count of burglary and stealing and sentenced to serve 1 ½ years' imprisonment for each limb of the offence. The sentence is to run consecutively.

The grounds of appeal are that the appellant is remorseful and he is seeking a lenient sentence. Although the court sentenced him to 1 ½ years' imprisonment, he was told at the prison that the sentence was 3 years. Miss Opiyo, State Counsel, opposed the appeal and submitted that the sentence was proper.

Two witnesses testified for the prosecution. **PW1 ENOCK KENYATTA** was the complainant. On the 5.9.2012 he went to his home at about 2.00 a.m. and saw the appellant carrying two jerricans, three sufurias and one plate. The appellant was outside his house and he fled. PW1 held him and his brother went to the scene. The matter was reported to the village elder and the police. **PW2 JOHN LUNANI SANYA** was in his house on the 5.9.2012 at 2.00 a.m. when he heard screams. He is the village elder. He went and found PW1 had arrested the appellant. He saw two jerricans, three sufurias and one plate. The appellant was arrested and taken to the police station.

The appellant was put on his defence and he gave unsworn testimony. His stated that his wife had delivered and he was at the Webuye district hospital. He decided to sell his cow so that he could go and discharge his wife. On 7.9.2012 he managed to sell the cow and went to pay the bill. He came back with his wife and while at his home the village elder PW2 went and arrested him. He was beaten and forced to accept the charges. He lost part of his money.

Two witnesses testified for the prosecution. The stolen items were not produced in court but they were found. The prosecution evidence shows that the appellant was found having stolen the items of PW1. His defence to the effect that he was arrested at his home was just but an afterthought. PW2 was the village elder who went to the scene and found that the appellant had been arrested. I do find that the prosecution proved its case despite the fact that only two witnesses testified.

The appellant contends that the sentence is excessive. It is true that the appellant was sentenced to serve 3 years imprisonment as the sentence is to run consecutively. Since the charge was one but with two limbs, I do find that there was no need for the sentence to run consecutively. I do order that the sentence shall run concurrently. The appeal lacks merit on conviction and is disallowed. The appellant shall serve 1 ½ years' imprisonment from the date of conviction.

**Delivered, dated and signed at Kakamega this 18<sup>th</sup> day of February 2014**

**SAID J. CHITEMBWE**

**J U D G E**