



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 125 OF 2010

SILAS WAWIRE APPELLANT

=VERSUS=

REPUBLIC RESPONDENT

JUDGMENT

The Appellant **SILAS WAWIRE**, was convicted for the offence of **SHOP BREAKING** and **COMMITTING A FELONY** Contrary to Section 306 (a) of the Penal Code. He was then sentenced to two (2) years imprisonment.

The conviction was based on the Appellant's own plea of "**Guilty**". However, he has challenged the conviction on the grounds that the facts which were given by the prosecution did not reveal the Criminal Offence.

The learned State Counsel, **Mr. Mulati**, conceded the appeal. He shared the Appellant's view, that the facts of the case did not disclose any offence.

What were the facts which the prosecution put forward? They are as follows:-

“On 11/08/2010, the complainant who stays in Langas area left his workshop where there were several items including sofa sets and stools amongst others. When he returned he found one double seater sofa set and a two-seater sofa missing. He commenced investigations and the matter was reported at Langas Police Station. The accused persons were then arrested. One single-seater sofa set was recovered with four small tables. They were then charged.”

It is to be noted that the Appellant was charged alongside one other person, hence the use of the word words "**They were then charged.**" Those facts do not indicate the person or persons from whom the sofa set and the small tables were recovered. Therefore, the facts do not link the Appellant to the offence.

In any event, the facts do not indicate any breaking into any premises or any theft from any such premises. When the offence is one of breaking into a premises and stealing from there, it is necessary that the facts in support of that charge should bring out those essential ingredients of the offence. It is also necessary to have facts which connect the accused person with the acts complained about.

But that was not done in this case.

Furthermore, whilst the charge sheet cites one double-seater sofa set and two single-seater sofa set as the properties which were missing from the complainant's show-room, the facts presented by The prosecution made reference to the recovery of 4 small tables and one single-seater sofa set.

As no tables were cited in the charge sheet, it is not clear how they were connected to the offence. In the result, I find that the Respondent was right to have conceded the appeal. Accordingly, the appeal is allowed. I quash the conviction and set aside the sentence.

I order that the Appellant be set at liberty forthwith unless he is otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET,

THIS 20TH DAY OF MAY, 2014.

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FRED A. OCHIENG

JUDGE.