



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 192 of 2011

(From Original Conviction and Sentence in Criminal Case No. 1074 of 2011 of the Senior Resident Magistrate's Court at Kwale – A. O. Aminga (RM))

DIANA MUTHONI KARIUKI APPELLANT

- Versus -

REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was convicted and sentenced to three years imprisonment for the offence of handling stolen goods contrary to Section 322(2) of the Penal Code Cap 63 of the Laws of Kenya.

The particulars are that on diverse dates between the 24th day of June 2010 to 29th June 2010 at Corner Musa Village Diani Location in Kwale District, otherwise than in the course of stealing dishonestly received or retained one Radio Cassette make Sony valued at Kshs. 17,000/- knowing or having reasons to believe it to be stolen goods.

On 24th day of June 2010 the complainant traveled upcountry to Kirinyaga and left behind his girlfriend by the name of Zulfar Mubarak.

Upon return on 27th June 2010 he did not find Zulfar his girlfriend and missing from the house were his cooking utensils, television set, radio cassette, bed, mattress, gas cooker, portable fan and clothes.

He commenced inquiries and reported the matter to police. When Zulfar showed up at Police Station she alleged that she was the wife of the complainant upon which the OCS told them to go and solve their issues at house but being dissatisfied with those instructions he reported the matter to officers from the Criminal Investigations department. In the house of the Appellant they recovered a Sony Radio which he identified as his. Diana (the Appellant) was a friend of Zulfar.

In her defence the Appellant told the trial Magistrate that she knew the complainant and one Zulfar as friends. The complainant lost his job when Zulfar was seven months pregnant. He had traveled upcountry when Zulfar went to her and asked for financial support and gave a Sony rAdio as security. She gave her Kshs. 2,000/- and they entered into an agreement to that effect.

In this case the trial Magistrate correctly found that the two Accused persons did not steal as alleged in the main count. The complainant had left his girl friend one Zulfar behind when he travelled to Kirinyaga. She had the keys for the house and custody of the household goods therein.

While he was away she carted away most of his household goods. The two must have had major

differences. It is apparent that in furtherance of disposing off the goods and or hiding them she entrusted them on her close friends who happened to be the Accused persons among others.

The complainant and police should have directed the thrust of their investigations on the girlfriend/wife of the complainant. The two Accused person were collateral damage.

There is no evidence to the effect that they knew that items found on them were stolen ones. They indeed knew the relationship between the complainant and his girlfriend Zulfar. They did not hide the recovered items. The Appellant in this appeal did produce an agreement between her and the complainant's girlfriend/wife. The same had been shown to the investigating officer. The trial magistrate had observed that it was manufactured. I do not know where he got that evidence from.

In a nutshell, though the Sony Radio was found in the house of the Appellant, the fact of it being found there is not in itself proof that she knew that it was stolen.

Police should have proceeded to arrest the complainant's girlfriend and treat the Accused persons as witnesses.

The conviction of the Appellants was not safe. The appeal has merit. It is allowed on both conviction and sentence.

The Appellant is set at liberty unless otherwise lawfully held.

Dated and delivered at Mombasa this 12th day of March, 2013.

M. MUYA
JUDGE

Dated and delivered in open court in the presence of:-

Mr. Tanui for State

Counsel for the Accused

Court clerk – Mr. Musundi

M. MUYA
JUDGE