

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 159 OF 2011

(Appeal against the judgment of [E. K. MAKORI, PM] delivered on 20.7.2011 in the Senior Resident Magistrate's Court at Mumias in Criminal Case No.426 of 2011

SULEIMAN OMAR OFULA APPELLANT

V E R S U S

REPUBLIC RESPONDENT

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**. The particulars of the offence were that the appellant *on the night of 19th and 20th May 2011 at unknown time at Mission AP Camp Township sub-location in Mumias District within Kakamega County jointly with others not before court broke and entered the dwelling house of No. 2008073617 APC REAGAN WASONGA OCHIENG with intent to steal therein and did steal from there in one Gas Cylinder, one Iron Box, one blanket, two pairs of shirts, one pair of shoes, one pair of military boots, one maroon belt, one jungle trouser, one Angolo shirt, two trousers all valued at KSh.17,200/= the property of the said REAGAN WESONGA OCHIENG*

The appellant was also charged with an alternative count of handling stolen property contrary to **section 322(2)** of the **Penal Code**. The particulars of that offence were that the appellant *on the 6th day of July 2011 at about 8.00 p.m. at Masinjira sub-location Mumias District in the course of Stealing dishonestly received and retained one pair of military boots, one maroon belt, one jungle sweater, and one jungle trouser knowing or having reason to believe them to be stolen property.*

The appellant pleaded guilty to the charge and he was sentenced to serve four years imprisonment for each count. The sentence is to run concurrently. The grounds of appeal are that he pleaded guilty to charges, he would like the court to reduce the sentence as he is epileptic and is seeking for leniency. During the hearing of the appeal the appellant asked the court to reduce the sentence. Mr. Okoth, State Counsel, opposed the appeal and submitted that the appellant was found with stolen items and some of the items belonged to the State. The sentence is appropriate and there is no medical evidence that the appellant is epileptic.

The appellant concedes that he pleaded guilty. The record of the trial court shows that the victim of the burglary was an Administration Police officer and some of the items that were stolen included police uniform. When the appellant was arraigned in court the court noted that he was seriously sick and ordered him to be taken to hospital. The appellant was taken again to court on the 13.7.2011 and the court noted that the appellant was sickly. The offence is serious and the appellant knew that he was retaining police uniform which can be used to commit crime. I do find that there is no need to review the sentence. The appeal lacks merit and is hereby disallowed.

Delivered, dated and signed at Kakamega this 30th day of October 2013

SAID J. CHITEMBWE

J U D G E