



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 140 OF 2010

VENARD MARUTI APPELLANT

=VERSUS=

REPUBLIC RESPONDENT

JUDGMENT

BENARD MARUTI, was convicted on two (2) counts of **Burglary contrary to Section 304 (2) of the Penal Code, and Stealing contrary to section 279 (a) of the Penal Code.**

The 2 sets of offences were committed on 21st and 22nd March, 2010, respectively. He was then sentenced to imprisonment for 5 years on each count.

In his appeal, the appellant raised a total of six (6) issues. However, when canvassing the appeal, **Mrs Khayo**, the learned advocate for the appellant abandoned 4 of those issues.

The appellant submitted that the case against him was not proved beyond any reasonable doubt. He pointed out that P.W.1 failed to prove the ownership of the television set which had allegedly been stolen from him. The mark by which P.W.1 had identified the television set was only fixed on the item after it had been recovered.

Meanwhile, the son of P.W.1 did not testify, yet the beddings in issue had been used by him for about 10 years. The said beddings were said to have been stolen from the house where P.W.1's son lived. Therefore, the appellant submitted that P.W.1 was not the owner.

As regards P.W.2, he had said that his 2 tables had been stolen. Those tables were cream and brown, respectively. However, the tables exhibited in court were green and cream.

The appellant submitted that the discrepancy was vital, as the complainant had identified his tables by their respective colours.

The complainants were faulted for failing to produce receipts to prove their assertions of ownership.

Meanwhile, the trial court was faulted for shifting the burden of proof to the appellant, by finding that the appellant did not prove that he was the owner of the various items which he is alleged to have stolen.

Finally, the appellant submitted that the sentences were excessive. As far as he was concerned, he ought to have been given a non-custodial sentence.

In answer to the appeal, **Ms Ruto**, learned State Counsel, submitted that the conviction was well

founded. It was the Respondent's contention that the complainants had properly identified the various items that had been stolen from them.

The television is said to have had the initials of the complainant, whilst the 2 tables had the name of the complainant written under them.

On the issue of the sentences, the Respondent submitted that the same were reasonable.

Being the first appellate court, I have re-evaluated all the evidence on record, and drawn my own conclusions.

P.W.1, **REUBEN AMBETI SITINGO**, was the complainant in count 1. He said that at about 3.00 a.m. on 21st March, 2010, his T.V. And DVD were stolen from his house. A curtain and a table-cloth were also stolen.

When P.W.1 checked on his son's house, he found that a mattress, blanket and bedsheets were missing. P.W.1 reported the incident at the Nangili Police Patrol Base. Later, the T.V., mattress, Bed-sheet and blanket were recovered from the house of the appellant, in Soy trading centre.

Although P.W.1 did not have any receipt for those items, he identified the T.V. as his because he had inscribed the initials "A S" on the back of the T.V.. Contrary to the appellant's contention, P.W.1 did not inscribe those initials after the T.V. was recovered.

I find that the said initials, which stand for "**Ambeti Sitingo**" is sufficient proof of ownership by P.W.1. The mattress belonging to P.W.1's son was also identified by P.W.1. He was able to do so because the mattress had been in his custody for 10 years. Similarly, P.W.1 identified the blanket and bed-sheets as they had been in his home for a considerable period of time.

To my mind, there is no legal requirement that ownership can only be proved through documentary evidence, such as receipts. Whilst receipts may constitute the easiest way to prove ownership, it is not the only medium through which ownership can be proved. The initials of the owner of the goods can constitute sufficient proof of ownership.

Similarly, if a person had used or owned any item for a considerable period of time, he may prove that he was the owner by simply pointing out any feature that enabled him to identify the item as belonging to him.

Thus, when P.W.2 picked out the 2 tables which were inscribed with his name, that was sufficient proof of ownership. But what colour were the tables? The learned trial magistrate indicated that they were cream and brown. But P.W.2 appears to have identified one green table.

If the colours were different from the ones on the tables of P.W.2, and if P.W.2 identified the said tables by their respective colours, then there would definitely be a problem. However, it is important to note that P.W.2 identified the tables because each of them was inscribed with his names.

The items belonging to P.W. 1 and to P.W.2 were recovered from the house of the appellant, in Soy trading centre. Neither P.W.1 nor P.W.2 had seen the person or persons who stole from their respective houses. Thus, the only thing connecting the appellant to the two offences was the recovery of the stolen items, from the appellant's house.

When the prosecution had closed its case, the learned trial magistrate directed that the items be released to the 2 complainants, if the appellant did not claim ownership of the same. The appellant told the trial court that none of the six (6) items belonged to him.

The trial court ordered that the 2 tables be released to P.W.2, whilst the T.V., Mattress, Bed-sheet and blanket were to be released to P.W.1.

Before giving those directions, the learned trial magistrate was satisfied that those two complainants had proved their ownership of the respective items.

Having re-evaluated the evidence, I am also satisfied that P.W.1 and P.W.2 had proved ownership to the respective items, which were then released to them.

When the appellant was put to his defence, he confirmed that the items were recovered in his possession. But he then said that he had bought the said items, and that he therefore had receipts for them. This is what the appellant added, during cross-examination;

“I was arrested by P.C. Shikuku (P.W.3). Certain items were recovered in my possession. I saw them produced in court”.

If there was any need for confirmation that the items which were stolen from P.W.1 and P.W.2, were recovered from the house of the appellant, then the appellant personally confirmed that position.

Curiously, however, he went on to say that the said items were not recovered from his house. I say that that is curious because the appellant never challenged the evidence of the prosecution witnesses when all of them said that the exhibits were recovered from his house.

In any event, the appellant expressly confirmed that the exhibits were found in his possession. Therefore, whether or not the place where he had the items was his house or not, would not be material. As the items were recovered whilst in the appellant's possession, some six (6) days after they were stolen from their respective owners, the doctrine of recent possession was properly invoked by the learned trial magistrate.

Accordingly, I find no merit on the appeal against conviction. As regards the sentences, I note that under section 304 (2) of the Penal Code, the offence of burglary attracts the sentence of 10 years imprisonment.

Meanwhile, the offence of stealing attracts the sentence of 14 years imprisonment, pursuant to section 279 (b) of the Penal Code.

Those legal provisions, coupled with the fact that the appellant was not a first offender, leads me to hold that the sentences of 5 years imprisonment on each of the counts was actually lenient.

I find no reason to justify the appellant's contention, that he should have been given a non-custodial sentence.

In the result, the appeal is dismissed. I uphold both the conviction and the sentences.

DATED, SIGNED AND DELIVERED AT ELDORET

THIS 23RD DAY OF OCTOBER, 2013.

FRED A. OCHIENG

JUDGE.