



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL APPEAL NO. 170 OF 2012

SAMSON MUNENE MUGO APPELLANT

VERSUS

REPUBLICRESPONDENT

**(APPEAL ARISING FROM THE JUDGMENT OF THE SENIOR RESIDENT MAGISTRATE'S
COURT AT BARICHO BY J.N. MWANIKI – CRIMINAL CASE NO. 855 OF 2010 ON 5TH
MARCH, 2011)**

JUDGMENT

This appeal was placed before me for hearing pursuant to the Honourable Chief Justice's Gazette Notice No. 13601 dated 4th October 2013.

The appellant was convicted for the offence of burglary contrary to **Section 304 (2) of the Penal Code** and stealing contrary to **Section 279 (b) of the Penal Code** and was sentenced to six (6) years imprisonment.

He has now appealed to this Court against both the sentence and conviction and in his grounds of appeal, he has stated, inter alia, that no exhibits were recovered on him, that the trial Court relied on hearsay evidence and that there was a grudge between him and the complainant who is his uncle. He also says that he was not given an opportunity to defend himself.

This being a first appeal, I have evaluated the evidence on record to see if the same supports the conviction.

The brief facts are that the complainant who is father to the appellant operates a shop at Kangai which he locked at 7 p.m. on 22nd September 2010 but on the following morning, he found it had been broken into and Ksh. 11,000/= stolen. He found the appellant's Identity card and also his cap in the shop. The matter was reported to the police and in the meanwhile, the appellant disappeared. He was however later arrested and charged and in his defence, he confirmed that the complainant was his father and that in May 2010, he lost his Identity card and on 22nd September 2010, he was arrested while at home.

I have considered the evidence on record and although the appellant talks of a grudge between his parents and the complainant, no such issues of a grudge were put to the complainant during the trial. The complainant's evidence was corroborated by JOSEPH NJOROGE (PW3) who was present when the

appellant's Identity card and cap were found in complainant's shop. The appellant has no explanation of how his Identity card and cap came to be in the complainant's shop only saying that he lost it. The appellant does not suggest that PW3 also had a grudge against him. The finding of the appellant's Identity card and cap in complainant's shop the morning after it had been broken into was sufficient circumstantial evidence upon which the finding of guilt could be entered against the appellant. The appeal against conviction is not merited and is dismissed.

On sentence, the appellant was sentenced to six (6) years imprisonment on 5th March 2011. He was a first offender and only Ksh. 11.000/= was stolen. That sentence was manifestly excessive. He has now been in prison for 2 years and seven months which in my view is adequate punishment. I allow the appeal and the sentence is reduced to the term already served. He shall be released forthwith unless otherwise lawfully held.

B.N. OLAO

JUDGE

15TH OCTOBER, 2013

Judgment delivered in open Court this 15th day of October 2013.

Ms Kambanga State Counsel present

Mr. Muriithi Court clerk present

Appellant present.

B.N. OLAO

JUDGE

15TH OCTOBER, 2013