



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**HCCRA NO. 313 OF 2012**

ALI FADHILI .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From the original conviction and sentence of G. N. Sitati RM, Mumias, Criminal Case No. 773 of 2012)*

**JUDGEMENT**

The appellant herein Ali Fadhili was initially charged before the SPM's Court Mumias with the offence of house breaking contrary to Section 304(1) (b) and stealing contrary to Section 279(b) of the Penal Code. Particulars were that on the 26th day of August 2012 at Luminu village, Township Sub-Location, Nabongo Location in Mumias District within Kakamega county, broke and entered the building used as a dwelling house by Zakayo Simiyu and stole one solar, one battery, make chloride, four bed sheets, one washing basin, one padlock, cash Ksh 30,000/= and one mobile phone make Samsung all valued at Ksh 47,370 the property of Zakayo Simiyu.

Alternatively the appellant was charged with the offence of handling stolen property contrary to Section 322(2) of the Penal Code. Particulars are that on 27th August 2012 at Ekama village, Nuclear Sub-Location, Nabongo Location in Mumias District within Kakamega county otherwise than in the course of stealing, dishonestly received and retained one washing basin, one bed sheet, one padlock knowing or having reason to believe them to be stolen property.

The prosecution called 3 witnesses. The complainant's evidence is that on 26.8.2012 he left home to go to his place of business leaving his house securely locked. He came back later in the day and found his house broken into and his property stolen. He inquired from a neighbour Chepkemboi if he had seen anybody enter his house and the neighbour told him that indeed he had seen Ali Fadhili, the appellant enter the complainant's house and left carrying items escaping behind the toilets. The complainant reported this to the police who arrested the appellant. A search conducted led to the recovery of some of the complainant's stolen items at the appellant's house.

Chepkemboi the complainant's neighbour gave evidence that she was outside her house on 26.8.2012 at 6 pm when she saw the appellant entering the complaint's house. He later saw him leave with a blue basin. The witness later informed the complainant what she had witnessed. Appellant was arrested the following day and he admitted stealing from the complainant.

The 3rd witness was the investigating officer who also told court that they went to the appellant's house after the theft report, and they recovered the complainant's stolen items. The items were produced

in court as exhibits.

Put on his defence, the accused opted not to say anything. The trial court heard this case and convicted the accused on the main count. The trial court premised its findings on the fact that the appellant was seen entering the complainant's house and left carrying a basin which was one of the stolen items. Within a short interval, the appellant was also arrested and the stolen items were recovered from his house. He offered no evidence on his part and the prosecution's evidence remained water tight.

The appellant now appeals before this court on both conviction and sentence on the grounds *inter alia* that:-

1. **The court didn't consider his *alibi*.**
2. **That the evidence adduced by the prosecution was not sufficient to convict him.**
3. **That the court did not analyze material contradictions in the prosecution's case.**

I have considered these grounds and I find the grounds lack any merit. The issue of *alibi* does not arise as the appellant gave no evidence. There were no contradictions in the prosecution's case noted nor any that the appellant has pointed out. I find that the evidence adduced at the trial court was sufficient and water tight to sustain a conviction and I do confirm the conviction.

On the sentence this offence carries a maximum penalty of seven years. The trial court handed down the appellant 5 years which is within the sentence allowed by law. I would be reluctant to interfere with the trial magistrate's discretion and I therefore confirm both the conviction and sentence and dismiss this appeal accordingly.

DATED THIS 10<sup>TH</sup> DAY OF DECEMBER 2013

**HELLEN S. WASILWA**

**JUDGE**

DELIVERED THIS 10<sup>TH</sup> DAY OF DECEMBER 2013

**S. J. CHITEMBWE**

**JUDGE**