

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO 70 OF 2013

TIMOTHY MUTEMI SYENGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from the original conviction and sentence by the Kyuso Principal Magistrate (B.M Mararo, PM) in Criminal Case No 66 of 2013.

JUDGEMENT

Timothy Mutemi Syengo, the appellant, was charged with burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the Penal Code. The particulars are that on the night of 15th of May 2013 at Tseikure Town in Tseikuru District in Kitui County broke and entered the dwelling house of Foridah Kaymmia Musyoka with intent to steal from therein and did steal from therein cash Kshs 2050/=, a sufuria containing cabbage and meat stew, a plate with ugali and a sufuria lid all valued at Kshs 450/ the property of Foridah Kayumia Musyoka.

The appellant faces an alternative of handling the sufuria and lid and a plate otherwise than in the course of stealing knowing or having reason to believe they were stolen goods.

The appellant was arraigned in court on 20th May 2012 for plea and he denied the charges and the matter placed for hearing on 17th July 2012. On the latter date the appellant told the court to read the charges afresh as he had not understood them the first day. This was done on 4th June 2013. He admitted the charges and the facts were given on 6th June 2013. The recovered items being sufuria, sufuria lid, plate, hot pot and cash Kshs 2,200 were exhibited in court.

The appellant admitted the facts and mitigated that he could not get employment and went to the complainant's to get food.

This case is similar to Criminal case No 67 of 2013. The pleas were taken on the same day and the change of the plea was done on the same day. The appellant has raised similar grounds of appeal, that he has no experience in court procedure; that he was not given time to think about the offence and that police threatened him.

The state opposed the appeal and submitted that the sentence is not illegal, harsh or excessive. The learned state counsel asked the court to enhance the sentence.

Again, as I stated in Criminal Appeal No 140 of 2013, the appellant has not demonstrated that this appeal has merit. The sentence is legal, the plea was taken properly, the appellant understood what he was charged with and had all the time he needed to think about the charges.

I have considered the matter fully and find that this appeal has no merit and I do hereby dismiss the same. The appellant is lucky to have escaped with three year's imprisonment. It is so ordered.

Dated, signed and delivered this 3rd day of December, 2013

S.N.MUTUKU

JUDGE