



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 83 OF 2010

(An Appeal against both conviction and sentence of the Chief Magistrate's

Court at Kakamega in Criminal Case No. 547 of 2010 [P. N. ARERI, RM])

JAMES WANGWERO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, **JAMES WANGWERO**, was charged with the offence of burglary contrary to **Section 304 (2)** and stealing contrary to **279 (b)** of the Penal Code.

It was alleged that on the night of 27th and 28th March 2010 at Township area, Bukhungu Location, Shirere Sub-location, in Kakamega Central District within Western Province, he broke and entered the dwelling house of JACKLINE MUCHIWERE with intent to steal and therein did steal coloured TV 14 inches of make LG Kshs.11,000/=, Sony DVD Kshs.5400/=, hand bag containing Kshs.5700/=, documents Kshs.7500, Amarula Kshs.2250/=, Lesso Ksh.200/=, carpet cleaner Kshs.520/=, air freshener 150/=, , diva hand wash Kshs.250/= all valued at Kshs.27,270/= the property of the said JACKLLINE MUCHIWERE.

In the alternative, the appellant was charged with the offence of handling stolen goods contrary to **section 322 (2)** of the Penal Code. It is alleged that on the 27th and 28th March 2010 at Township area, Bukhungu Location, Shirere Sub-location, in Kakamega Central District within Western Province, otherwise than in the course of stealing, dishonestly received or retained one hand bag and an empty Amarula bottle knowing or having reasons to believe them to be stolen goods.

On 30.3.10 the charge was read over and explained to the appellant who admitted the same. A plea of guilty was entered and the facts read out to the appellant on 1.4.10.

The appellant admitted the facts. The facts basically reflect that the complainant heard footsteps outside her house and on checking found the door of her house had been broken and her properties stolen. The complainant raised an alarm. The appellant was arrested the following day while in possession of some of the stolen items. The recovered goods were produced as exhibits.

The appellant admitted the facts as correct and was convicted and sentenced to “seven years imprisonment on each limb.”

The Appeal is both on conviction and sentence. I have noted a glaring anomaly in the proceedings before the lower court.

The lower court record does not reflect whether the appellant pleaded guilty on the main count of burglary and stealing or whether he pleaded guilty to the alternative count of handling stolen goods.

I am therefore in agreement with the ground of appeal raised by the appellant that the plea was equivocal.

I have considered whether in the circumstances a retrial is necessary. The appellant has served almost one year of the unlawful sentence. Consequently, I quash the conviction and set aside the sentence. The appellant is at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 8th day of March, 2012

B. THURANIRA JADEN

JUDGE