

informed her that her shop had been broken into the previous night. She went to the shop and confirmed the neighbours' report. She found that assorted items had been stolen among them sugar, soap, sweets, materials and juggery sugar-all valued at Kshs 10,000/=. She reported to Kaimosi Police Station.

On 4th may, 2008, at Kapkangani market, she saw a woman selling juggery sugar. She noted that the same had her seal on it. She called the police who on interviewing her were informed that she had purchased the juggery sugar from the appellant. The woman was **Beatrice Mbone** who testified as P.W.4. The appellant was traced and he in turn led the police to the deceased where other items were recovered which the complainant identified. The appellant was arrested by APS who took him to Kaimosi Police Station where he was re-arrested by **P.C. Pius Rono** (P.W.3) and subsequently charged as already stated.

On being put on his defence, the appellant denied committing the offence as already stated.

On the above facts, the learned magistrate found that the offence of handling stolen goods had been proved as required in law and convicted him as already stated. In convicting him, the learned magistrate stated as follows:-

“there is overwhelming evidence that he 1st accused handled stolen goods. P.W.4 testified that it was the 1st accused who sold the stolen juggery to her. The 1st accused confirmed that he knew of the theft when he led the police to the second accused's house where the other items were recovered.”

The complainant's shop was indeed broken into. P.W.2, **Angode Ominde**, corroborated the complainant's testimony of the break-in and the theft and so did P.W.3, **P.C. Pius Rono** of Kaimosi Police Station who visited the scene the morning after the incident. The complainant lost several items which she narrated to the court. One of the items she had lost namely the juggery sugar was found with P.W.4, **Beatrice Mbone**, who led the police and the complainant to the appellant. The appellant in turn led the team to the deceased where other items stolen from the complainant's shop were recovered and identified by the complainant. I cannot fault the findings and conclusion of the learned magistrate.

In the premises, I agree with the learned Senior State Counsel that the appellant was convicted on sound evidence. The evidence adduced clearly displaced his defence which was rightly rejected. The appeal against conviction is therefore dismissed.

With regard to sentence, I note that the property stolen was all valued at Kshs 10,000/=. Some of it was recovered. I concur with the learned Senior State Counsel that the sentence of six (6) years imprisonment was manifestly excessive in the circumstances. I will therefore interfere with the same. Considering that the appellant has been in custody for an aggregate period of over three (3) years taking into account the remand custody, I think the appellant has learnt his lesson.

The appeal against sentence is therefore allowed. The sentence of six (6) years imprisonment is hereby set aside and is substituted with a sentence of imprisonment for the period already served. The appellant should be released forthwith unless he is otherwise lawfully held.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS
7TH DAY OF DECEMBER, 2011.**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

The **Isaack Sakwa**, the appellant in person and **Mr. Kabaka** for the State.

F. AZANGALALA

JUDGE

7/12/2011.