

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 344 OF 2008

(From Original Conviction and Sentence in Criminal Case No. 760 of 2007 of the Senior Resident Magistrate's Court at Taveta: J.M. Githaiga – S.R.M.)

SARONI MENGO MNENE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant SARONI MENGO MNENE, has filed this appeal against his conviction and sentence by the learned Senior Resident Magistrate sitting at Taveta Law Courts on a charge of HANDLING STOLEN PROPERTY CONTRARY TO SECTION 322(2) OF THE PENAL CODE. The Appellant and his co-accused one VICTOR MUTUA KIKAVA were both arraigned before the lower court on 24th December 2007. The two accused persons were jointly charged on Counts 1, 2 and 3 of BURGLARY CONTRARY TO SECTION 304(2) AND STEALING CONTRARY TO SECTION 279(b) OF THE PENAL CODE. Additionally both the Appellant and his co-accused each faced a charge of HANDLING STOLEN PROPERTY.

The charges emanated from a series of burglaries which occurred at various dates at Challa Chief's Camp in which the houses of two Administration Police Officers namely No. 96065551 APC AHMED HUSSEIN ADEN PW1, and No. 95055090 APC CORPORAL ABEDNEGO TIAMALE PW2. In the course of those burglaries various household items including the uniforms belonging to the two officers were stolen. A couple of days after the thefts the Appellant was allegedly found wearing one of the stolen uniforms. Appellant led police to his co-accused Victor who in turn led police to a bush where the remaining police uniforms were recovered. Both accused persons were put to their defence and gave unsworn statements denying the charges. On 21st April 2008 the learned trial magistrate delivered his judgement in which he acquitted both Appellant and his co-accused of the three counts of Burglary and Stealing. The Appellants co-accused Victor Mutua Kikava was also acquitted of the charge of Handling stolen property. However the trial magistrate did convict the Appellant of Handling stolen property and after listening to his mitigation sentenced the Appellant to serve fourteen (14) years imprisonment with hard labour. Being aggrieved by both his conviction and sentence the Appellant filed this appeal.

The Appellant who was unrepresented at the hearing of his appeal relied entirely upon his written submissions which had with the leave of the court been duly filed. MR. MUTETI, learned State Counsel appeared for the Respondent State and opposed the appeal. I have carefully perused the record of the trial. Both PW1 and PW2 testified about the burglaries in their respective houses on 16th November 2007 and 4th December 2007. They also testified that various items including their official police uniforms were stolen. I hardly think either PW1 or PW2 would testify that their houses were broken into if this did not in fact occur. They stood to gain nothing at all by so doing. PW5 PC. DAVID GITHINJI testified that on 19th December 2007 about one month after the burglaries, he received a call from the Deputy O.C.S. of Taveta Police Station one Inspector Onyango, informing him that some persons dressed in police uniforms were terrorizing people in the Bura Ndogo area and further that one suspect had been apprehended. PW5 went to the O.C.S. office where he found the Appellant detained there, wearing full AP uniform. The Appellant had been beaten and injured by the mob and the uniform he was wearing was blood stained. The items which the Appellant was found wearing were

-	A	Jungle	Jacket	Pexb5
-	A	Jungle	Shirt	Pexb2

- A pair of Jungle trousers Pexb1(b)
- Beret with crown Pexb7

The police also recovered from the Appellant a pair of hand-cuffs Pexb6. PW1 told the court that he was called to Taveta Police Station where he identified the recovered Jungle trouser Pexb1(b) and Jungle shirt Pexb2 as his stolen uniform. PW1 observed that although the clothes were clean when they were stolen, they were blood-stained when he found them at the police station. On his part PW2 who was also a victim of the burglaries identified his stolen hand-cuffs Pexb6, jungle jacket Pexb5, and beret with crown Pexb7. Both PW1 and PW2 were serving Administration Police Officers. It is entirely natural that they would have in their houses the regulation uniforms. On his part the Appellant is totally unable to explain his possession of these police uniforms. He was not a member of the Forces and ought not to have had such items in his possession. There can be no doubt that the police uniforms the Appellant was found wearing were the very same ones stolen from PW1 and PW2. Appellant could not have obtained these items legitimately and he must have known that they were stolen or illegally obtained.

In his defence the Appellant claims that this case was framed by the sub-chief of his area who had a grudge against him. He did put this to PW5 during cross-examination but PW5 categorically denied even knowing this sub-chief. There is no evidence of any grudge against the Appellant by PW5, PW1, or PW2. They had no motive to lie against the Appellant. This defence clearly has no basis and was rightly dismissed by the trial magistrate. I find that the prosecution did prove the charge of Handling as against the Appellant. His conviction was sound and I do confirm the same.

The trial magistrate sentenced the Appellant to serve 14 years in prison with hard labour. This is the maximum penalty for this offence as provided for by S. 322(2) of the Penal Code. Whilst I do agree that the offence was serious as it involved the theft and misuse of Government stores, I do feel that the imposition of the maximum penalty was uncalled for. Nobody was injured in the course of the thefts and the stolen items were eventually recovered. In my view this sentence was harsh and excessive given the circumstances. I hereby set aside this sentence and substitute a sentence of seven (7) years in prison to run from the date of conviction by the trial court. The appeal succeeds to this extent only.

Dated and Delivered in Mombasa this 15th day of October 2010.

M. ODERO
JUDGE

Read in open court in the presence of:-
Appellant in person
Mr. Onserio for State

M. ODERO
JUDGE
15/10/2010