



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 64 of 2007

ABRAHAM OLOO ODHIAMBO APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From conviction and sentence in the Senior Resident Magistrate's

Court at Homa Bay Criminal Case No.772 of 2006,

by E. K. MWAITA ESQ., AG.S.R.M)

JUDGMENT

The appellant was convicted of the offence of handling stolen property contrary to **section 322** of the **Penal Code**. The particulars of the offence were that on 25th May 2006 at Kodiera village in Homa Bay District of Nyanza Province, otherwise than in the course of stealing, dishonestly retained one solar panel serial No.SD605032608, having reason to believe it to be stolen property.

The appellant was sentenced to five years' imprisonment. He was aggrieved by the conviction and sentence and preferred and appeal against the same.

The evidence that was tendered before the trial court, briefly stated, was as follows:

Mustafa June Hemus, PW1, the security officer at ICIPE Thomas Odhiambo Campus, testified that on 15th April, 2006 two solar panels belonging to the said institution were stolen.

On 20th May, 2006, as PW1 and some other people were looking for some chairs that had also been stolen, they were directed to the home of the appellant by Calistus Omondi Odero, who had been charged for theft of the chairs. The appellant opened a store in his home where the solar panel was kept. He said that it had been kept there by a brother of Calistus Omondi Odero.

The evidence of PW1 was corroborated by that of David Omega, PW2. The solar panel was positively identified as being one of the two that had been stolen from the complainant.

Police Constable Kibet Igago, PW7, stated in his examination in chief that the solar panel was found in the house of the appellant's co-accused. However, in

re-examination he stated that it was recovered from the appellant's house. The appellant was a relative of Calistus Odero, the first accused before the trial court.

In his defence, the appellant denied that the solar panel was recovered from his premises.

From the evidence on record, I am satisfied that the appellant was found in possession of the solar panel that had been stolen from the complainant. In RATILAL & ANOTHER VS REPUBLIC [1971] E.A. 575, the Court of Appeal held that on a charge of handling stolen goods, the prosecution must prove:

(a) *that the handling was otherwise than in the course of stealing;*

(b) *that the accused received the goods knowing or having reason to believe that the goods were stolen; or*

(c) *that the accused dishonestly undertook or assisted in retention, removal or disposal or realization of the goods by or for the benefit of another person.*

The evidence of PW1 showed that the appellant had received the solar panel from Calistus Omondi Odero. The appellant did not demonstrate that he innocently handled the solar panel. He must have known that it had not been properly acquired by his co-accused. The appellant's conviction was safe and I have no reason to interfere with the same.

With regard to the sentence that was handed down by the trial court, the appellant was a first offender and was remorseful. I am of the view that the sentence of five years' imprisonment with hard labour was rather harsh. I allow the appeal on sentence and reduce the same to the period already served. The appellant is consequently set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at KISII this 27th Day of June, 2008

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Bosire for the Appellant

Mr. Kemo, Senior Principal State Counsel for the State

D. MUSINGA

JUDGE