



REPUBLIC OF KENYA
HIGH COURT OF AT EMBU
Criminal Appeal 93 of 2006

THOMAS KARANI GATIMU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Appellant is the only one convicted of the offence of Handling Stolen property contrary to Section 322 (1). His co-accused were acquitted of all offences charged. He was sentenced to 4 years imprisonment on alternate count aforesaid. He had filed 5 grounds of Appeal the main of which are that the prosecution did not prove their case beyond reasonable doubt, and that no independent witnesses were called, and that arresting officer did not produce any documents found in the house and his defence was not considered.

The prosecution's evidence as far as the alternative charge was concerned was that the complainant house was broken into and things stolen and that after some time (after 8 months) the recovery was made. The complainant was called to the police station by a general public notice that people could go to collect their lost goods at police station. The complainant went to the station and identified some of the stolen items as his. The complainant had not identified the robbers who had earlier attacked his home.

PW4 a police officer accompanied OCS and OCPD Kerugoya. They traveled to Kimicha area to some house where it was suspected to be stolen property. Inside the house they found four (4) young men. They arrested 3 of them and after conducting search, they recovered several items suspected to be stolen goods. The items were taken to police station and information was spread by police for people to come and identify goods stolen. Some goods were identified. The 4th suspect who was in that house was a pastor and upon satisfying the police officers was let of. The house belonged to Appellant. After things were recovered there was an identification parade but the complainants were not able to identify any suspect.

In his defence the appellant Thomas Karani Gatimu on oath alleged that one police officer asked for a bribe and further that the person released had bribed the police. And that he was arrested because his cow hit the police vehicle on the road. He emphasized that the police released the real culprit. This statement confirms that he was in the house where 4 men were arrested and he saw the fourth man a pastor being released. And the fact is that he was not arrested by way side but in his house. When the OB was produced by DW4 it was found that on 23/8/2005 the appellant and other accused were already booked but there was no mention of their having stolen goods recovered from the appellant and others, and specifically mentioned. It will be noted that the charge sheet indicates items stolen were of complainants. The appellant and others were acquitted in count 1 and 2 in charge sheet for lack of evidence of identification however, complainant was able to identify the items that were missing after the

robbery that night. The recovery was after 8 months of theft. The Trial Magistrate held correctly that the doctrine of recent possession of stolen goods could not be invoked the items could have passed many hands by the end of 8 months as they were household items and personal items.

The evidence of recovery is firm and truthful. On the other hand appellant defence is untrue the allegation that he was arrested on the roadside after his cow hit the police car is unbelievable. He turned to lay blame on the person who was released as the real thief confirming that he was found in his house sitting with co-suspects when the alleged co-suspect was released. The matter was explained well by police officers that the explanation given by that person was convincing that he was not at fault.

I do not believe that the police officers had solicited for a bribe where would a pastor get money to bribe officers? It is my finding that the Trial Magistrate acted correctly in finding the appellant guilty of alternative charge. I see no merit in this appeal. The sentence of 4 years is lenient considering the maximum is 14 years.

The appeal is therefore dismissed.

Dated this 18th July, 2007.

J. N. KHAMINWA

JUDGE

18/7/2007

Khaminwa – Judge

Njue – Clerk

Appellant present in person

Mr. Kimathi for State Counsel present

Judgment read in open court.

J. N. KHAMINWA

JUDGE