



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 74 of 2006

JACKSON GAKURU PETER.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of Burglary and stealing contrary to section 304 (2) and 279 (b) of the Penal Code. The case against his co-accused was withdrawn. He has set down 6 grounds of appeal the main complaint being that:

1. No eye witness was called.
2. That no exhibits were recovered from his possession.
3. No corroborating evidence.
4. That the case was a fabrication.
5. He also prays that his assets be given back to him.

The prosecution evidence is that the complainant PW1 found her house broken into and money taken. She noticed footprints leading towards the home of the appellant whom she suspected “**as he is renowned village thief**” She reported the matter to police. Later she was summoned by the police and was informed the Appellant had been arrested. He was found with a new bicycle, 1300/= and new clothes. It is said the appellant was interrogated in presence of complainant and was heard to have admitted the offence. There are issues raised in this case.

Firstly no one saw appellant breaking into or stealing in the complainant’s house. The complainant said she notice foot prints leading to the house of Appellant 400 meters away and she suspected the robber was the appellant “**as he was a renowned village thief.**” This suspicion was not backed with any evidence. No instances of theft were proved and the prosecutor said the appellant had no criminal record. The foot prints were not proved to be of the appellant. Where is evidence that the complainant had kept 11,300/= or any other sum of money in her cupboard. The prosecution just followed her allegations there was no evidence at all. Also complainant said she asked the appellant’s employer whether the appellant had been given a salary. This witness said only 200/= But the employer was not

called to give evidence. The Appellant says he had his own money Shs.9,000/= which he used to purchase his goods.

There are other issues. The prosecution proceeds to produce evidence showing the appellant admitted the offence. Was what he said admissible against him. The items found were belonging to the appellant and he explained how he bought them. There was no proof to the contrary. For circumstantial evidence to secure a conviction on a criminal charge the circumstances surrounding the commission must point to the appellant as the only person who was with an opportunity to commit the offence. As it is the prosecution evidence started with suspicion in support by the facts and ended in a suspicion. It is not disputed that the items purchased by appellant were purchased lawfully. No one is claiming the same.

It is my finding that the prosecution evidence did not point to the accused as the one who committed the offence. The ground that he was a village thief is not supported by any evidence, suspicion that he had no money to purchase his things was not proven he gave a reasonable explanation of how he had obtained money and how he purchased the items. There was no contrary evidence. Suspicious evidence is not enough to reach a conviction.

I therefore find that prosecution evidence does not prove the offence beyond reasonable doubt. I allow the appeal and quash conviction and set aside sentence. The appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 17th July, 2007.

J. N. KHAMINWA

JUDGE

I also order that the bicycle and other items belonging to him be return to him forthwith.

J. N. KHAMINWA

JUDGE

17/7/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kimathi for State Counsel

Appellant present

Read in open court

J. N. KHAMINWA

JUDGE