

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 9 of 2004

FRANCIS IRERI NJAGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with count one for Burglary and stealing contrary to Section 304 (2) and 279 (b) respectively of the Penal Code. There was an alternative count of handling stolen property contrary to Section 322 2) of the Penal Code. After a full trial the appellant was found guilty of the offence under count one and was sentenced to 5 years imprisonment in each limb.

In his petition of appeal he says that the Trial Magistrate relied on uncorroborated evidence which was fabricated; that regarding evidence of those relatives there was need for later examination to see if there is a grudge, that the Trial Magistrate failed to consider the duration between the dates of offence and that of arrest was enough for the stolen properties to have changed hands. The defence which was cogent and true was not considered.

The prosecution evidence was that it was the Appellant who led the complainant and police to several places where the stolen goods were found. Also that it was the appellant who distributed the goods among other accused persons. There is no evidence that these other accused persons were aware that the goods were of any other person but the appellant. They were in possession of the goods for him. The appellant admitted having taken part in the robbery. He with 2nd Accused, he said, broke into the complainant house through the widow however 2nd accused denied and explained how he came to be involved in this matter. He called workmates who confirmed his explanation. On the part of Appellant he did not have any corroboration to the evidence about 2nd accused it was word of one accused against the co-accused.

In his submissions and in his grounds of appeal he only asked the court to order the sentences to run concurrently not consecutively because the offences took place in one transaction. On grounds of appeal the law does not require any corroboration except in certain circumstances this is not one of them. The evidence given was not only between relatives. The appellant himself admitted being at the scene. He is the one who led police and complainant to where the goods were kept. Therefore the issue of grudge does not feature in the proceedings. The duration the incident on the night of 6th /7th August 2003 and date of arrest and 16/8/2003 is not a long period and there was evidence that the Appellant was looking for buyers of blankets. The complainant was able to identify the stolen goods and by following the chain of events the person to whom the goods were given by the appellants gave evidence of having received the same directly from the Appellant there were no third parties involved. The trial Magistrate considered the defence of the appellant thoroughly according to the record and came to the conclusion that the appellant was guilty.

I therefore do not see merit on any of grounds of Appeal.

However, I agree where two offences are committed in events occurring at the same time sentence may be passed to run concurrently. I therefore interfere with the sentence and order that the two terms of imprisonment to run concurrently not consecutively. Otherwise the appeal is dismissed.

Dated this 6th November, 2007.

J. N. KHAMINWA

JUDGE

6/11/2007

Khaminwa – Judge

Njue- Clerk

Mr. Kimathi for State Counsel for Appellant present.

Read in open court.

J. N. KHAMINWA

JUDGE