



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 65 of 2005

JOHN NGUTHU NGONGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with Church breaking contrary to Section 306 (a) Penal Code with alternative charge of handling stolen property Section 322 after trial he was convicted and sentenced to serve 6 years in prison.

He filed grounds of appeal namely:-

1. that evidence relied upon was not collaborative.
2. that the trial Magistrate considered hearsay evidence adduced by PW3.
3. that evidence of prosecution was shallow and was not proved beyond any reasonable doubt.
4. that the Trial Magistrate failed to consider his sworn evidence shifting burden of proof on the appellant.

Prosecution evidence was that PW1 who was a bursar at Kiambere School Complex and a church elder of Kiambere Full Gospel Church.

On 17.12.2005 he locked the church with a padlock. The following morning he was informed that the church door was open and the lock had been cut. Inside the church, PW1 found 14 plastic chairs missing and a wooden table. The matter was reported to Kiambere Police Station. The chairs were marked KFGC at the back of each chair. PW1 was told somebody was found selling chairs and on 20/12/2004 PW1 with police went to Isako market. Police went into the market and arrested the Appellant and recovered 3 plastic chairs which were identified as church property. Some other chairs were recovered by Police near the appellant house eleven in all.

PW2 is the one who noticed the church having been broken into.

PW3 was the police officer who received report of theft of church property. He investigated the case and produced the 14 recovered chairs as exhibits. He was investigation officer.

In his defence the appellant made allegation showing how he was arrested and that he was asked for

Shs.500/= as a bribe and that the chairs were planted on him by police officers who demanded a bribe and he was later charged with this offence.

This unsworn statement was unbelievable considering the evidence offered by prosecution. The record shows that the Trial Magistrate made findings that the appellant was found being in possession of the three chairs and that similar chairs were found with the appellant near his home were all stolen from the church . The chairs were marked with identification marks the initials of the church.

I have perused the Judgment in the lower court and I find no reason to interfere. The trial Magistrate was correct in his findings and applied proper law in the circumstances. I dismiss the grounds of appeal as lacking in merit. Therefore Appeal is dismissed.

Dated this 6th November, 2007.

J. N. KHAMINWA

JUDGE

6/11/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kimathi for State

Appellant present

Read in open court.

J. N. KHAMINWA

JUDGE