



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU**

**Criminal Appeal 108 of 2005**

**PAUL KYALO IMOTE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant was charged with the offence of house breaking contrary to Section 304 (1) and stealing contrary to Section 279 (b) Penal Code. He was convicted and sentenced to 4 years imprisonment each limb. He filed 3 grounds of appeal namely:-

1. that there was no one who saw him breaking the house
2. the stolen goods were not found with him.
3. that stolen solar panel was recovered from Moses Njoka but he was not arrested.
4. that on 31/1/2005 appellant was in his shamba when he received information and with the employer they went to the shop.

The prosecution evidence is that the complainant's house was broken into and things stolen.

On 1/2/2005 the complainant went to Kiambere Police Station and reported the matter. The following day the appellant who was an employee of the complainant had disappeared from home but had left his goods in the house. He did not return for a period of 7 days. On 8/2/2005 the complainant returned to the police station and "**mention the appellant's name**" as main suspect. Later complainant returned home and found appellant had returned. He looked suspicious. Neighbours came and arrested the appellant. Appellant mentioned other co-accused (2) and (3). Later was rearrested by police officers. Later 13/2/2005 police officer showed complainant a solar panel which the complainant identified as his. Complainant knew accused No.2 but not Accused No.3. Of course he knew Appellant as he had employed him in the house.

PW2 was a barber the appointment to his shop for a shave. He was carrying two paper bags he left one with the barber to watch over it while he went away. Then a police officer came for shaving at Barber shop and PW2 informed him of the luggage left by Appellant. The police officer unwrapped the luggage and it was containing a solar panel radio cassette Panasonic battery powered. The contents of the yellow bag were exhibited only solar panel was identified by complainant.

PW3 Assistant Chief arrested Appellant at the request of Kiambere Police Station. He knew appellant as employee of complainant. In his defence the appellant admitted that he was in complainant's employment as a farm attendant. He was informed that complainant's house had been broken into. He went home and confirmed that the house had been broken into. He said he knew nothing about the case and he was not found with the Solar panel.

From the record appellant admitted having been an employee of complaint. Evidence of PW2 shows that he went to the barber shop for a shave with some luggage in a yellow plastic bag. PW2 informed a police officer customer of the luggage in the yellow bag and on opening there was a solar panel which was identified as of the complaint. Then the appellant disappeared from the home of employer for 7 days and was arrested later.

It is therefore true to say that no one found the appellant break into the house and steal. However the above evidence points to him as the person who broke into and stole the solar panel of the complainant. The circumstantial evidence is very strong and points directly to the appellant as the person who committed offence.

I find the evidence of prosecution firm and the case is proved beyond reasonable doubt. I see no reason to interfere sentence of 4 years. Imprisonment is neither excessive nor harsh. I therefore dismiss the grounds as having no merit.

The appeal is dismissed.

Dated this 6<sup>th</sup> November, 2007.

**J. N. KHAMINWA**

**JUDGE**

**6/11/2007**

**Khaminwa –Judge**

**Njue –Clerk**

**Mr. Kimathi for State**

**Appellant present.**

Judgment read in open court.

**J. N. KHAMINWA**

**JUDGE**