



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

Criminal Appeal 69 of 2005

WILSON IRERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with Burglary and stealing contrary to Section 304(2) and 279(b) respectively of the Penal Code. He was sentenced to 7 years imprisonment on each limb of offence. The prosecution evidence was that the complainant locked her house and went to her place of work for whole night. On returning the following day she found her goods and clothing stolen. She got a tip that her goods were in a certain room. She got police officer and they went to the room. They found goods in that house. In fact the appellant was lying on complainant's mattress. All goods were identified by complainant. In his unsworn statement appellant placed himself in the scene. He told the police that he was a visitor but they believed him. The state opposes this appeal. The appellant was at the scene and the goods were identified positively by owner. The law in this situation is that the one who is found with goods recently stolen is the thief. In this case the goods were found with the appellant soon after they were discovered stolen from the owner (the appellant admits that the time was sixty five minutes). If the witnesses died before they are able to give evidence nothing can be done.

I have perused the Judgment of the Trial Magistrate but I find no misdirection. I find no merit in the grounds of appeal and I find no reason to interfere. The appeal is hereby dismissed.

Dated this 5th December, 2007.

J. N. KHAMINWA

JUDGE

5/12/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kimathi for State

Appellant – present

Read in open court.

J. N. KHAMINWA

JUDGE