

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 275 of 2002

MOSES MURIUKI KARUGU APPELLANT
VERSUS
REPUBLIC RESPONDENT

*(Appeal from original Judgment and Conviction in Resident Magistrate's Court at
Karatina in Criminal Case No. 171 of 2001 dated 10th May 2001 by Mr. A. B. L.
Musiega – R.M. – Karatina)*

J U D G M E N T

Moses Muriuki Karungu hereinafter referred to as the appellant was tried and convicted by the Resident Magistrate Karatina for the offence of House Breaking and stealing contrary to section 304 (1) and 279 (b) of the Penal Code. He was sentenced to serve 3 years imprisonment on each limb of the charge and 1 stroke of the cane. Being dissatisfied the appellant lodged this appeal claiming that the trial magistrate erred in accepting the evidence for the prosecution as the case against him was just a mere frame up.

I have reconsidered and evaluated the evidence which was adduced before the trial magistrate.

It is evident that the complainant's house was broken into and her properties stolen. The prosecution evidence was that a T.V. set, a radio cassette and a blow – dryer which were among the stolen items were subsequently recovered from the house of one Owino (P.W.4) to whom the appellant had offered to sell the items. The T.V. set and the radio cassette were positively identified by the complainant who produced receipts bearing serial numbers which tallied with the serial Nos. on the T.V. set and radio cassette.

Although the appellant alleged that the case against him was a frame up, there was sufficient evidence to prove that the appellant was in possession of the stolen items and attempted to sell them to P.W.3 & P.W.4. The trial magistrate was right in rejecting the appellant's defence. I am satisfied that there was sufficient evidence to support the appellant's conviction.

I concur with learned State Counsel that the sentence imposed upon the appellant was neither harsh nor excessive. I find that this appeal has no merit. I therefore dismiss it in its entirety.

Dated signed and delivered this 8th day of February 2006.

H. M. OKWENGU

JUDGE