

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL 275 OF 2003
(Appeal against Conviction and Sentence of MR. F. M. KINYANJUI, (SRM) in
Vihiga Criminal Case No.397 of 2003)

FRANCIS KIBISU APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

Francis Kibisu, the Appellant, was the first accused in Vihiga S.R.M. Court Criminal Case No.397 of 2003. He was charged with two other persons with school office breaking and committing a felony contrary to section 306 (a) of the Penal Code and alone with an alternative count of handling stolen goods contrary to section 322 (2) of the Penal Code.

After hearing evidence of the prosecution witnesses and of the defence, the trial magistrate, F. M. Kinyanjui Esq., acquitted the 3rd accused but convicted the appellant and the 2nd accused of school office breaking and committing a felony c/s 306 (a) of the Penal Code and sentenced them to 6 years imprisonment.

The appellant put forward two grounds of appeal in which he submitted that no one testified that the stolen property was found in his house and that there was no proof beyond any reasonable doubt.

This court as a first appellate court has a duty to reevaluate the evidence adduced in the trial court and to make its own inferences and conclusions from that evidence and thereby give the appellant a fresh reconsideration of the case. The evidence adduced in the trial court in support of the charge showed that Munaiywa Primary School was on 16/3/03 broken and properties stolen there-from. The headmaster of the school, Edward Cherongeret (PW2) found the school broken and the school properties stolen on 17/3/03. He had locked the school on Friday 14/3/03 and left a watchman, one Eregwa Kideha (PW3) on duty. When he returned on Monday 17/3/03 he found the school had been broken and school properties stolen.

The watchman (PW3) gave evidence that while on duty in the school on the night of 16/3/03, he was attacked by people who hit him on the leg and head and that he fled for dear life leaving the attackers in the school compound. He hid in the school grounds. In the morning he reported to the headmaster what had happened and upon going back to the school PW3 and PW2 found the school offices and cupboards broken and school properties stolen. PW2 gave in his evidence a list of the things that had been stolen. PW3 did not identify any of the members of the gang of thieves.

Francis Givole (PW4) the Chairman of the school went to Monaiywa Primary School on 17.3.03 and ascertained that it had been broken and school propertied stolen. On tip off, PC Alfred (PW5) went to the house of the 2nd accused and then to the appellant's house on 17.3.03 at 10.05 a.m. and in both he recovered some of the stolen items. In the appellant's house PW5 recovered two clocks in his bedroom, a radio in the bathroom outside the house. The headmaster identified these items as belonging to the school.

The appellant denied in evidence that the items were recovered from his house. He testified that he was arrested while going home and that he was not involved in the commission of the offence. The area Assistant chief, Philip Maleyet testified that he was there when PC. Alfred went to the house of the appellant. He confirmed that the appellant ran away.

The trial magistrate who saw the appellant testify did not believe him and he found him and he found

his evidence unbelievable. The appellant fled into the banana plantation when the police went to his house. That was not conduct consistent with his innocence and the only inference that could be drawn was of guilt on his part. The stolen properties were found in the appellant's house so soon after they had been stolen from the school. The appellant offered no explanation as to how he had come by the property. Instead he fled. The trial magistrate was correct in applying the doctrine of recent possession and his finding that the appellant not having offered any explanation must have been the thief was appropriate.

The appeal has no merit. The appellant was properly convicted. I dismiss the appeal and uphold the conviction and sentence.

Dated at Kakamega this 28th day of October, 2005.

G. B. M. KARIUKI

J U D G E

28.10.2005