

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 266 OF 2003

(From original conviction and sentence in criminal case No.103 of 2003 of the DM's court at Ndhiwa.)

JOHN OCHUKA OGOLLA APPELLANT

VERSUS

REPUBLIC OF KENYA RESPONDENT

JUDGMENT:

Appellant was convicted for the offence of stealing from a dwelling house c/s 279(b) of the Penal Code by DM1 Ndhiwa. He was sentenced to three years imprisonment.

In his appeal the appellant seemed certified in his grounds of appeal. He states that the court failed to find out that the prosecutor did not establish a case against him and that he treated his defence as an Alibi. Record of proceedings show that the appellant pleaded guilty to the charge when read to him. Interpretation is shown to be Luo language which I believe the appellant understands.

The facts were then read to the appellant. He again admitted stealing the property. His plea was unequivocal and he was therefore properly convicted. The appeal against conviction is therefore rejected.

As for the sentence he was sent to prison for 3 years. He is a young man of 20 years and a first offender. He said he had an old mother to take care of. Stolen property was worth shs.6,300/= . The sentence was harsh and excessive.

I therefore set aside the sentence of 3 years and substitute it with one of one year imprisonment.

It is so ordered.

Delivered on 22nd June 2004.

KABURU BAUNI

JUDGE

22/6/2004

Mr. Kemo for State.

KABURU BAUNI

JUDGE