

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.332 OF 2003

(From original conviction and sentence of the SRM's court at Nyamira in criminal case No.390 of 2003.)

DANIEL NYANUMBA ISMAEL APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

The appellant was convicted by the Senior Resident Magistrate Nyamira for the offence of House Breaking and stealing contrary to section 304(2) and 279(b) Penal Code. He was sentenced to three years imprisonment on each limb.

The particulars were that on the nights of 2nd & 3rd May 2003 at Bundo sub-location in Nyamira, with others, he broke into the house of JARED OKONGO MAYUYA with intent to steal from therein and did steal.

The complainant had told the court that on 3.5.03 at 7 a.m. he found the padlock to his house had been broken. His items were stolen from the house. He reported to his father and the village elder. It had rained and there were footmarks. They followed them to the shamba of one Ismael Onsare where they found a black polythene bag hidden in tea bushes. Inside were two blankets, 2 audio cassettes, a trouser and a bible, which the complainant identified as his. They were among the items stolen from his house. Near there they found a trouser and raincoat, which were identified as those of appellant. Later when the appellant was arrested he led police to another shamba where an iron sheet was recovered. Complainant identified it. Also police searched his house and found a receipt belonging to the complainant.

The evidence of PW1 was corroborated. The stolen items were found near where the appellant's clothes were. When arrested he led police to where the stolen iron sheet was.

A stolen receipt was found in his house. All these point to appellant's guilt. The trial magistrate properly analyzed the evidence and reached a sound conclusion. Though the appellant was not seen breaking into and stealing from the house the circumstances leave no doubts that he committed the offence and he was therefore properly convicted. I therefore uphold the conviction.

As to sentence the appellant was jailed for three years. The prosecution had treated him as a first offender though the probation report showed he was not. The value of stolen goods was shs.7,000/=. Sentence of 3 years was excessive in the circumstances. I set aside the sentence of 3 years and substitute it with one of 12 months imprisonment.

It is so ordered.

Dated at Kisii this 24th September 2004.

KA BURU BAUNI

JUDGE

24/9/04