

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NOS.304 OF 2002 & 24 OF 2003

(From original conviction and sentence of the CM's court at Kisii in criminal case No.770 of 2002

ISMAEL MORARA ONYUOKI APPELLANTS

MESHACK KOINDI MAKORI

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

The house of the complainant was undoubtedly burgled into. Some of those items were recovered from the house of the 2nd appellant in the presence of his own father. They were positively identified by complainant as some of his stolen items. There was also the evidence of PW5 to the effect that the 2 appellant pretending that they were in dire need for money succeeded in selling to him one iron sheet on the morning after the burglary.

The totality of the prosecution evidence thus showed that the appellants were seen in possession of stolen items a few hours after the burglary. Their denials of that fact were definitely false and had to be rejected. The convictions are thus based on sound evidence and the appeals against them are hereby rejected.

But these are first offenders and a great deal of the stolen items were recovered. The concurrent sentences of 7 years is quite high. I reduce the sentence on each limb to 5 years. Each appellant will receive one stroke on each limb. The sentences to be served concurrently. It is ordered accordingly.

Dated and delivered on the 11th day of July 2003.

I.C.C. WAMBILYANGAH

JUDGE