

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 758 OF 2002

(From Original Conviction and Sentence in Criminal Case No.1011

of 2002 of the Senior Resident Magistrate's Court at Limuru)

PETER NDUNGU MIRARU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

REASONS FOR JUDGMENT

On 20th August, 2003 I dismissed the applicant's appeal. I reserved the reasons for doing so which I now give

The appellant, *Peter Ndungu Mirara*, was convicted on the first count of burglary and stealing contrary to section 304(2) and 279(b) of the Penal Code. On the second count of house breaking and handling of stolen goods contrary to section 322(2) of the Penal Code.

In the alternative count, of dishonestly receiving and retaining two batteries, one basin, five glass plates, eleven metal plates, one kettle, two electric toasters, one spoon, one radio cassette, one tape measure, one speaker, four shirts, four long trousers, two coats, two table clothes and 2 cassettes knowing or having reason to believe them to be stolen goods.

It was the prosecution's case that on the night of 24th and 25th April, 2002 they jointly broke and entered the house of one Joseph Mwaniki at Gatimu village with intent to steal and did steal the items itemized in the charge sheet.

The evidence adduced in the lower court through PW1 (*Joseph Mwaniki Njuguna*) is to the effect that Njuguna's house was broken into and assorted items stolen therefrom.

PW2 (*Joyce Mumbi Kungu*) Kungu's house was also been broken into. The son of Kungu one John Kinyanjui (PW3) saw the appellant, who is the uncle came out of the house with a battery.

PW4 (*Njuguna Kungu*) was informed by PW2 (*Joyce Mumbi Kungu*) and members of the public that the appellant had broken into the house of Joyce Kungu. Kungu (PW4) was present when the items produced as exhibit and identified by Njuguna (PW1) and Joyce (PW3) were recovered from the house of the appellant.

Sgt *Ward Nguyo* (PW5) re-arrested the appellant from the members of the public and recovered the stolen items from house of the appellant. The appellant confessed to Sgt. Nguyo that he was with the second accused (*John Muturi Joram*). The recovery of the stolen items in the house of the appellant brought into being the doctrine of recent possession. The appellant has not given any explanation of how he came by the items in issue.

On the basis of the foregoing evidence the evidence against the appellant was overwhelming. The appellant was properly convicted and I therefore have no reason to interfere with the decision of the

learned trial Magistrate.

The appeal therefore has no merit. For those reasons I ordered the appeal both against conviction and sentence dismissed.

DATED and DELIVERED at NAIROBI this 26th day of September 2003.

N.R.O OMBIJA

JUDGE