

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO.8 of 2003

**(From Original Conviction and Sentence in Criminal Case No. 49 OF
2001 at Sioakago Resident Magistrate's Court J. N. ONYIEGA –
R.M.)**

JOHN KARANI NGIRI APPELLANT

VERUS

REPUBLIC RESPONDENT

JUDGMENT

JOHN KARANI NGIRI (hereinafter referred to as the Appellant) was charged jointly with one Lawrence Njugi Nyaga (hereinafter referred to as co-accused) with the offence of pump house breaking and committing a felony C/S 306(a) of the Penal Code before the Resident Magistrate Siakago. It was alleged that on the night of 10th & 11th December, 2002 they jointly broke and entered into a pump house of Rwika Technical Institute and stole there from one electrical mortar pump valued at Kshs.200,000/- the property of Rwika Technical Institute.

Upon trial the Appellant was convicted and sentenced to serve 3 years imprisonment with 4 strokes of the cane while his co-accused was acquitted. The Appellant has appealed against his conviction and sentence.

The evidence before the trial court was that on 1st December, 2000 at around 12.30 p.m. P.W.3 Evans Muriuki who is a farm employee at Rwika Technical Institute discovered that the school farm house had been broken into and the electrical mortar pump for the water machine was missing. He reported the matter to P.W.1 Geoffrey Githinji Kamau the Principal of the Institute who visited the farm house and confirmed that the machine was missing. On the same day at around 2.30 p.m. P.W.2 Eustace Njeru, a technician cum driver at the Institute was going back to the Institute from his lunch break when he notice a taxi passing near the school. Inside the taxi was the Appellant whom he knew as John Karani. He was suspicious of the Appellant so he immediately reported to P.W.1. P.W.1 and P.W.2 followed the taxi in P.W.1's personal vehicle. They managed to catch up with the taxi and blocked its way forcing it to stop. There were two occupants of the taxi the co-accused who was the driver and the appellant. At the back seat next to where the appellant was, was the electrical mortar pump which was missing from the institute. The appellant jumped out of the vehicle and disappeared.

The co-accused and the recovered mortar pump machine were taken to Kiritiri police post. Later the appellant was arrested at Embu in connection with another offence. The Appellant and the coaccused were subsequently charged with this offence. In his defence the appellant requested for leniency. He denied having stolen. The appellants co-accused explained that he was hired by the Appellant and that he did not know that the mortar was stolen. Having considered the evidence the trial magistrate found that there was sufficient, consistent and corroborating evidence against the Appellant. He therefore convicted him of the offence.

I have considered and re-evaluated the evidence against the Appellant. It is apparent that he was caught red-handed while trying to transport the stolen mortar machine. Although the Appellant escaped,

He was clearly seen and identified by all the 3 witnesses from the Institute i.e. P.W.1, 2 and 3. There was no question of mistaken identity since the witnesses appeared to know the Appellant well and identified him by name. The recovered water pump was also positively identified as belonging to Rwika Technical Institute.

There was an omission in that the person who arrested the Appellant was not called to testify so that the circumstances under which he was arrested were not clear. Nevertheless the omission was minor given the overwhelming evidence that was apparent against the Appellant. The defence offered by the Appellant barely fell short of an admission and the trial magistrate was right in rejecting the defence. I am therefore satisfied and do find that the Appellant's conviction was proper.

On the sentence, the 3 years imprisonment plus 4 strokes was not so excessive as to justify interference by this court. The order for the sentence to run consecutive to the one Appellant was serving was in order since the offences were apparently not committed at the same time.

The upshot of the above is that I find no merit in this appeal and do dismiss it in its entirety.

Dated signed and delivered this 9th day of December, 2003.

H.M. OKWENGU

JUDGE