



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL APPEAL NO. 159 OF 1999  
(From Original Conviction and Sentence in Criminal Case No.990 of 1997  
of the Senior Resident Magistrate's Court at Kitui, K. A. Ogola Esq., on  
2.9.99)**

**PETER MWANZI ::: APPELLANT**

**VERSUS**

**REPUBLIC ::: RESPONDENT**

**Coram: J. W. Mwera J.  
Appellant absent  
Mrs. Murungi State Counsel for Respondent  
C.C. Muli**

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**J U D G E M E N T**

20 The appellant Peter Manzi was charged with 2 counts in the lower court at Kitui with others. He was accused 1 in both counts. The first read that on the night of 15th/16th July 1997 at Bondeni Estate Kitui the appellant with the others jointly broke, entered and stole from the house of Benson Nguta household goods worth Sh. 24700/=. In the second charge it was alleged that on the same night at Kalundu market Kitui, the group broke into a workshop of Musyoka Kitongi and stole furniture and other material worth Sh.8060/=. After trial the lower court found the appellant guilty of burglary and theft (in count 1) and for this he got 4 years in jail. He was at that time already serving another jail term for another offence of handling stolen property (not a subject in the lower court CR.Case 990/97). There was another accused person Sera Musyoka (accused 5) who got 24 months imprisonment. Her appeal No.Cr.A. 196/99 meant to be heard along with the present matter was dismissed when Mr. Kalili Advocate by his letter of 28.11.2000 sought to abandon it.

The petition of appeal claimed that nobody saw Peter committing the offence and 10 that the charge against him was a frame-up. That a statement in evidence had been refuted (/) and no exhibits were produced in court.

Benson Nguta's (P.W.1) hence was raided by thieves at night when he was asleep. But he was woken up by the commotion so he went round to check only to discover that his house had been burgled and his property gone. He went to report to the police station. He found recovered property there some of which P.W.1 identified as his stolen items. He was also shown suspects arrested with those goods and the appellant was one of them.

P.C. Kavivi (P.W.2) while at his house at this Bondeni Estate got information that 20 the appellant and others had been seen carrying suspected stolen goods. He went to the police station and got other policemen. They went to the appellant's house. He was in and asleep. Some goods were recovered from there. On interrogation, he led them to the house of another accused (accused 3). More goods (of other people) were recovered. Then the appellant and accused 3 led the team to the house accused 5 (Sera Musyoka Cr.A. No. 196/99) – at Mosquito Estate, Kitui Town. More goods were found here including those that Benson Nguta (P.W.1) was able to identify as his.

This plus other evidence on record shows that the appellant and others broke, entered and stole from

the house of P.W.1 on the night in question. The stolen goods were found there, he with another thief led the police – at the house of Sera Musyoka. They were produced in court.

The appellant gave a statement under charge and caution to IP Kaloki (P.W.5) which was admitted as a confession voluntarily given after a trial-within- a trial.

On the whole the appellant was convicted on strong evidence. The house of Benson was burgled and property stolen therefrom. The Learned Trial Magistrate gave an omnibus sentence of 4 years in jail. He ought to have ordered a specific sentence on each of the two limbs constituting the charge upon which the appellant was found guilty, together with corporal punishment. Accordingly the lawful and proper sentence is now imposed whereby the appellant has to serve 4 years imprisonment on each limb of the offence and also to receive two strokes of the cane on each limb. The sentence to run 20 concurrently.

The appeal is dismissed and the sentence regularised to a total sum of 4 years imprisonment plus four (4) strokes of the cane.

Judgement accordingly.

**Delivered on 22nd January 2001.**

**J. W. MWERA**

**JUDGE**