

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO.315 OF 2000
**(Being an Appeal From Original Conviction and Sentence in Criminal Case
No.311 of 2000 of the Snr. Resident Magistrate's Court at Voi – E.N.
Maina, SRM)**

JOSHUA MWEMA SILA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant jointly with another was charged with 2 counts of theft of Telco Solar Panels and Control Switch, one count of possessing Giraffe tail (game trophy) and an alternative charge of handling stolen property. Only the appellant was convicted of 2 counts of stealing and the 3rd count of being in possession of game trophy.

This appeal is against both conviction and sentence.

The prosecution evidence is that on 3rd March 2000 PW.1 an engineer with Telecom Kenya was informed that at Mbuyuni Station Tsavo West National Park 23 solar panels were stolen and one was broken and left on site. The matter was reported to local police station and statements were recorded.

On 6/3/2000 the Solarex Control and The P.C. Stephen Wanyoike and P.C. Philip Ndeto on information given by PW.6 arrested the appellant from Taveta Law Courts where the appellant was attending Court on another court case. The Appellant led the PW.5 and PW.6 and PC. Ndeto were taken by appellant to his home and to a certain shamba and therein stolen items were recovered from a deep hole namely giraffe tail, repeater switch and another machine.

This evidence is supported by the evidence of DW.1, DW2, and DW3. These witnesses for Defence said they saw people come 8into the home of the accused and move into their shamba where they returned carrying cartons with items and the people were accompanied by the Appellant.

These items were identified as those stolen from the Telcom Mbuyuni Station. Police carried out further investigations even into Tanzania, but nothing more was seen. The appellant was charge as I have stated earlier and was tried. In his defence he denied the offences and said the PW.6 police officer had a grudge against him and was giving evidence against him maliciously. The evidence of PW.6 shows that he had been operating in the area for 4 years and had occasion to arrest the appellant on previously in course of his duties. There was another case then pending in court against the appellant for theft of panels and the S. Sgt. Kieti (PW.6) was involved. There is no personal angle in officer's works and reject this complaint. The appellant also said he was blindfolded and was tortured after which they were taken to Moshi. Apart from these allegations no evidence of torture of ill treatment was offered.

The items were found in the fast shamba of the appellant family not just anywhere in the bush. The appellant is the one who said they had sold the solar panels to people in Tanzania that is why the investigation officer traveled all the way to Tanzania to try to investigate the theft.

Upon perusing the complete record of trail in the lower court I find the evidence of prosecution to be

clear and straightforward. The trial magistrate is correct in convicting the appellant. The prosecution case was proved beyond reasonable doubt. I therefore find no reason to interfere with the conviction. As for sentence it is in the discretion of the Trial Magistrate to decide on punishment. An appellate court can only interfere if it is found the sentence is harsh and excessive .

I do not find the sentence of 3 years excessive or harsh and I decline to interfere. In the circumstances the appeal is dismissed.

Dated at Mombasa this 1st Day of November, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE