



**Mohammed alias Rama v Republic (Criminal Appeal E012 of 2024)
[2025] KEHC 8144 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 8144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E012 OF 2024
MS SHARIFF, J
APRIL 8, 2025**

BETWEEN

RAMADHAN MOHAMMED ALIAS RAMA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

A. Case background

1. The Appellant was charged with, and convicted of the offence of stealing from the person contrary to section 279(a) of the *Penal Code*. The particulars as per the charge sheet were that on the 14th day of July 2023 at Bungoma Milimani area in Bungoma South-Sub County, within Bungoma County, he stole a bag carrying a laptop, make Dell valued at Kshs. 42,000/= and a flash disk valued at Ksh. 2,800/=, Infinix mobile phone valued at Kshs. 15,000/= and school documents all valued at Kshs. 59,800/=, the property of, Beekan Wafula, from the person of the said Beekan Wafula.
2. The Appellant herein pleaded not guilty. After trial, he was convicted and sentenced to serve seven (7) years imprisonment for the offence.

B. Appeal

3. Aggrieved by the decision of the trial Court he appealed to this Court vide a Petition of Appeal undated and filed on 2nd February 2024, preferring the following grounds:
 - a. That he is a first offender.
 - b. That the learned trial magistrate erred in law and fact by failing to observed that there was no proper identification of the real perpetrator.



- c. That the learned trial magistrate erred in law and fact by failing to observe circumstantial evidence.
 - d. That the learned trial magistrate erred in law and fact by convicting the Appellant on the weakness of his defence.
 - e. That he wishes to adduce more grounds at the hearing hereof.
4. He availed supplementary grounds of appeals as follows:
 - a. That the learned trial magistrate erred in law and fact to convict the Appellant based on uncorroborated and contradictory evidence by the Prosecution witnesses.
 - b. That the learned trial magistrate erred in law and fact by convicting and sentencing the Appellant on none existing evidence.
 5. He prayed that this Honourable Court may quash his conviction and set aside his sentence and he be set at liberty.

C. Evidence

C.1 Respondent's evidence

6. The evidence at the disposal of the learned trial magistrate was that when Beekan Wafula (PW1), the complainant left the County Assembly where he was on attachment, he boarded a motorcycle home and the motorcycle rider requested they use the road to the police station as he wanted to drop some luggage then he proceeds to his destination. They stopped at some point and the Appellant appeared, greeted him and he then lost consciousness. On regaining his consciousness, he realized that his clothes and properties, laptop, phone amongst other things had been stolen and the Appellant, and the motor cycle rider were nowhere to be seen. He told the Court that he lost a laptop, attachment documents, ID card, ATM card, flash disk and other documents. According to him, the moment the Appellant shook his hands he lost consciousness. He reported the incident at the police station and the Appellant was apprehended on 18th July 2023. He told the Court that he spotted the Appellant with his bag at Ngerisha and upon being confronted by PW1, the Appellant started running away while shouting thief! thief! so as to divert the attention of the members of the public to his pursuers. The Appellant was apprehended by members of the public who also lamented that he was a certified thief. This witness told the Court that he knew the Appellant since 14th July 2023. On cross-examination, he told the Court that he met the Appellant, shook his hands and lost his consciousness.
7. PW1 further testified that he was in the company of Caleb Juma (PW2) at Ngerisha Saccoo, when they spotted the Appellant and he alerted PW2 that the Appellant was the person who stole from him. The Appellant flee from them as soon as he spotted PW1 but PW1 and PW2 caught up with him and when he was confronted by the Appellant, he pretended to be crossing the road with them to go and check for the stole items in his car only for him to start running away while shouting thief! thief! and they proceeded to pursue him while alerting the public and security guards stationed at the County Assembly of Bungoma, who assisted them to apprehend him. This witness identified the person they pursued and apprehended as the man in the dock.
8. PW1, Beekan Wafula, was recalled and he told the Court that he had the receipt for his laptop (Kshs.44,800-PMFI) and 2-16 GB flash disk (Kshs. 15,000-PMFI-2). On cross-examination, he told the Court that the laptop was in the bag and he also lost his phone. He insisted that it was the Appellant who stole from him once he shook his hands as he lost his consciousness.



9. PW2 Caleb Juma testified that on 18th July 2023 he was out taking lunch with PW1 who was his collegemate at Kisii University and when they reached Ngerisa Sacco Building, PW1 spotted the appellant and PW1 informed him that the appellant was the person who had stolen from him. It was the evidence of this witness that when PW1 confronted the appellant he pretended to be cooperative and purported to be leading them across the road to supposedly to retrieve the stolen items from his vehicle allegedly parked across the road only for the appellant to flee while shouting “thief” “thief”. This witness stated that they raised alarm and members of the public came to their aid by arresting the appellant at the Bungoma County Assembly. On cross-examination, he told the Court that he was not present when PW1’s items were stolen but was present when the appellant was apprehended and that the moment they saw the Appellant, he pretended to be crossing the road to Shariff Centre and then started to flee.
10. PW3 No. 89059 Daniel Marwa testified that he is based at Bungoma Police Station and that he was the investigating officer. According to him, PW1 reported a case of theft detailing that on 15th July 2023 at 12.00 p.m. while heading home from his place of attachment, he boarded a motor cycle which diverted along the way as the rider had stated he wished to drop some luggage. The evidence of this witness generally replicated that of the PW1. That upon the appellant being apprehended through a public arrest this witness re-arrested and interrogated him. PW3 testified that the appellant was positively identified by PW1 whereafter he proceeded to charge him in Court. This witness stated that PW1 availed receipts of the items he lost and he marked and produced them in Court as follows: Laptop receipt as PEXH 1 and Phone receipt as PEXH 2. He identified the person he had re-arrested and charged as the Appellant in the dock. On cross-examination, he told the Court that he was the investigating officer in this matter and that he was the one who re-arrested the Appellant and recorded the witness statements. He insisted that PW1 spotted and identified the Appellant.

C.2 Appellant’s evidence

11. The trial Court established that the Prosecution had made a prima facie case against the Appellant and placed him in his defence. The Appellant proceeded to tender sworn evidence and did not call any witnesses.
12. According to DW1, Ramadhan Mohammed, on the material date, he had just left Court heading to Al Shariff Centre when he was approached by two people and one of them claimed that he had stolen from him. The appellant maintained that he had never seen that person before. He claimed that he does not know why he was arrested and that he did not commit any offence.
13. Vide Court directions the parties were to canvass the appeal by way of written submissions. Both parties complied with the Court directions.

D. Analysis and Determination

14. This being a first appeal, I am guided by the sentiments expressed by Mativo J in *Sylvester Wanjau Kariuki vs. Republic* [2016] eKLR, where the learned judge held:-

“The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely...The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be



cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasoning in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind – sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.”

15. I have considered the Appellant’s grounds of appeal and respective written submissions of the parties herein. The issue for determination by this Court is whether the Prosecution proved its case against the Appellant beyond reasonable doubt.

16. In the instant appeal, the Appellant was charged with, and convicted of the offence of stealing contrary to Section 279(a) of the Penal Code. Section 279 of the Penal Code provides as follows in this regard:

“279. Stealing from the person; stealing goods in transit, etc.

If the theft is committed under any of the circumstances following, that is to say —

- (a) if the thing is stolen from the person of another;
- (b) if the thing is stolen in a dwelling-house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
- (c) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
- (d) if the thing stolen is attached to or forms part of a railway;
- (e) if the thing is stolen from a vessel which is in distress or wrecked or stranded;
- (f) if the thing is stolen from a public office in which it is deposited or kept;
- (g) if the offender, in order to commit the offence, opens any locked room, box, vehicle or other receptacle, by means of a key or other instrument, the offender is liable to imprisonment for fourteen years.”

17. The offence of stealing is defined by Section 268(1) of the penal code as;

“A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.”

18. It is trite that the duty to prove a case beyond reasonable doubt rests on the shoulders of the Prosecution at all times and that it does not shift. See *Okethi Okale v Republic* (1965) EA 555. It was not upon the Appellant to prove his innocence. The evidence tendered by the Prosecution in the instant case failed to demonstrate that items stolen from PW1 were found in the Appellant’s possession. However, an inference of culpability can be inferred from the circumstances attendant to the conduct of the



Appellant herein. The Appellant when spotted by PW1 and PW2 and confronted by PW1 pretended to be crossing the road with them to go and check for the stole items in his car only for him to start running away while shouting thief! thief! with the aim of confusing the members of the public into not apprehending him. The Appellant in his evidence did not challenge and/or controvert any of the evidence of the Prosecution witnesses (PW1 and PW2) even in cross-examination. The Appellant's defence was a mere denial and the same did not hold any weight against the overwhelming evidence on record. This was a classic case for circumstantial evidence. For circumstantial evidence to work, it must be inconsistent with the accused's innocence. In the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, Court had this to say on circumstantial evidence:

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -‘It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.’”

E. Conclusion

19. I do find that the prosecution had proved its case against the appellant beyond any reasonable doubt and the fact that the trial magistrate referred to: stolen “poles and iron sheets” yet the charge sheet made reference to a bag carrying a lap top, flash disk, infinix cellular handset and school documents, does not devalue the evidence tendered by the state. That reference of Poles and iron sheets amounts to a mere slip in the description of the stolen items.
20. On the sentence aspect, it is trite that sentencing is essentially an exercise of discretion of the trial Court. Therefore, for this Court to interfere with the sentence it must be shown that in passing the sentence, the Court took into account an irrelevant factor or that a wrong principle was applied or short of those, the sentence was so harsh and excessive that an error in principle might be inferred. (See – *Shadrack Kipchoge Kogo vs. Republic*, Criminal Appeal No. 253 of 2003).
21. I note that the Appellant used a substance that greatly impaired PW1's consciousness and left him in a detrimental state in an unknown place, which essentially further endangered his life. The trial court considered these aggravating factors viz avis the appellant's mitigation when it passed sentence. I hereby find no reason to interfere with the sentence imposed by the trial Court.
22. In a nutshell, having considered the evidence in its totality, the appeal fails. Accordingly, the conviction and the sentence is hereby upheld.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 8TH DAY OF APRIL 2025.

M.S. SHARIFF

JUDGE

In the presence of:

Appellant present virtually



Ms Kibet for the State for Respondent

Diana Court Assistant

