



**Owino v Republic (Criminal Appeal E007 of 2024)
[2024] KEHC 7347 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E007 OF 2024**

**KW KIARIE, J
JUNE 19, 2024**

BETWEEN

PETER OCHIENG OWINO APPELLANT

AND

REPUBLIC RESPONDENT

(From the original judgment in Criminal Case No. E914 of 2021 of the Chief Magistrate's Court at Homa Bay by Hon. R. B. N Maloba –Senior Principal Magistrate)

JUDGMENT

1. Peter Ochieng Owino, the appellant herein, was convicted on two counts. In count one, he was charged with burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the [Penal Code](#). In count two, he was charged with having Government stores contrary to section 324 (3) as read with section 36 of the Penal Code.
2. The particulars of the offence in count one were that on the 16th day of August 2021 at Homa Bay G.K. Prison, Homa Bay sub-County of Homa Bay County, broke into the dwelling house of Haron Mogeni Omweri with intent to steal from therein one smoke jungle jacket, a pair of police officer's shoes, one lanyard for gazetted officers, one green beret, 6kgs gas cylinder valued at Kshs 4,500/= and an identity card number 22163349 the property of Haron Mogeni Omweri.
3. In count two, the particulars of the offence were that on the 16th day of August 2021, along Rangwe-Rodi road, Homa Bay sub-County of Homa Bay County, he was found in possession of one smoke jungle jacket, a pair of police officer's shoes, one lanyard for gazetted officers, and one green beret with a crown, the property of the Kenya Prison Service. The property was suspected to be stolen or unlawfully obtained.
4. The appellant was dissatisfied and filed this appeal. He was in person and raised the following grounds of appeal:



- a. That the whole of the judgment delivered had some errors made by the trial magistrate.
 - b. This court may consider section 333(2) of the CPC by considering the period spent in remand since his arrest.
5. The state opposed the appeal on grounds that it lacked merits.
 6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
 7. After the house of Supt. Haron Mogeni Omweri (PW3) was broken into, and some items were stolen; the appellant was arrested while wearing a jungle jacket belonging to the Prisons Service, a beret with the Kenya Prisons crown, a lanyard, and black shoes that also belonged to the Prisons Service. This was the evidence of PC Eliud Agol (PW5).
 8. This officer's (PW5) evidence was that at 4:30 a.m., while on patrol with other colleagues, they stopped a motorcyclist, but he defied them. They chased him and intercepted him. On the motorcycle, they found some of the items that had been stolen from Superintendent Haron Mogeni Omweri's house.
 9. In his defence, the appellant claimed that the items belonged to a customer who fled after they were stopped at a roadblock. This defence was hollow because it did not account for the clothes and shoes he was arrested wearing. The learned trial magistrate arrived at the correct conclusion.
 10. Section 333 (2) of the Criminal Procedure Code states:
 - (2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
 11. The appellant remained in custody during the trial. His sentence is, therefore, ordered to run from the 16th day of August 2021, when he was arrested. But for this order, the appeal is dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

