



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ochieng v Republic (Criminal Appeal E032 of 2024)
[2024] KEHC 14031 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E032 OF 2024
RE ABURILI, J
NOVEMBER 12, 2024**

BETWEEN

FRANCIS OCHIENG APPELLANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Senior Principal
Magistrate's Court Criminal Case No. E138 of 2022 at Maseno)*

JUDGMENT

1. The appellant Francis Ochieng was convicted of Burglary and stealing contrary to Section 304(2) and 279(b) of the Penal Code respectively. He pleaded guilty to the charge and after facts were read to him, he admitted the same with qualifications that he did not know that the items were stolen and that he had been given to keep the items.
2. The trial court nonetheless convicted him and sentenced him to serve 7 years' imprisonment on each limb sentences to run concurrently.
3. However, the committal warrant shows that the sentences are to run consecutively.
4. The appellant has served over 2 years from 22nd April 2022. He appealed against sentence and the Principal Prosecution Counsel Mr Marete concedes the appeal on the grounds that the plea of guilty was equivocal. I agree.
5. Additionally, I observe that the sentences as imposed were to run concurrently but the committal warrant reads consecutively meaning he will serve 14 years' imprisonment.
6. As the plea was equivocal as rightly conceded by the prosecution counsel, I hereby quash the appellant's conviction and set aside the sentence imposed. The appellant has already served over 2 years of the seven years imprisonment. I shall not order for a retrial.



7. Therefore, unless otherwise lawfully held, the appellant Francis Ochieng is hereby set at liberty forthwith.
8. Release order and Signal to issue forthwith.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

