

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 55 OF 2017

JOHN MACHARIA KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from original Conviction and Sentence in Nanyuki CM Criminal Case No 529 of 2015 – W Gichimu, PM)

J U D G M E N T

1. The Appellant herein, **JOHN MACHARIA KAMAU**, originally faced four (4) main counts in the charge sheet and three (3) alternative charges. A fresh charge sheet was subsequently substituted containing four (4) main counts and two (2) alternative charges. Finally, an amended charge sheet was put in containing nine (9) main counts and some seven (7) alternative charges.

2. The main counts were **burglary and stealing** contrary to **sections 304(2) and 279(b)** of the **Penal Code** (Counts I, II, III, IV, VI, VIII & IX); and **stealing from a motor vehicle** contrary to **section 278(g)** of the Penal Code (Counts V & VII). All the alternative charges were **handling stolen goods** contrary to **section 322(1) & (2)** of the Penal Code.

3. The time frames for the various offences charged spanned from 21st December 2013 to 8th June 2015. The places of the offences named in the various offences included the Pub Area in Ngareng'iro Village; Thama Farm in Ngareng'iro Village; Turacco Farm; Naromoru Area; and Thingitho Estate. Except for Naromoru Area which is in Nyeri County, all the other places were in Laikipia County.

4. The trial of the Appellant commenced on 31/07/2015 and ended on 05/04/2017. Judgment was delivered on 26/05/2017. He was acquitted of all the nine (9) main counts; he was however convicted of nine (9) (!!) alternative charges of handling stolen property. He was sentenced to five (5) years imprisonment on each alternative charge, to run concurrently.

5. The Appellant appealed against both conviction and sentence. One of his complaints is that the charge sheet was too long and containing too many counts spanning many different places and times, as a result of which he could not know with any particularity and certainty what offence he was facing at any one point during the trial. The Appellant further complains that as a result there was no fair trial for him.

6. Learned counsel for the Respondent conceded without hesitation that the charge sheet was too long and complex, though he went on to argue that the Appellant well understood the charges. He also submitted that the alternative charges of handling stolen property were proved beyond reasonable doubt.

7. A graphic indication of the fact that the charge sheet contained too many counts and alternative charges is that the trial court convicted the Appellant of nine (9) alternative charges whereas, as we have already seen, there were only seven (7) alternative charges! If the trial court would be confused by the unduly long charge sheet, what about the Appellant, who was not defended?

8. The offences themselves were alleged to have been committed in five (5) different places in two counties over a period spanning from 21st December 2013 to 8th June 2015, a period of about one-and-a-half years.

9. This was not the case of one continuous transaction resulting in multiple offences. There was no reason why the Appellant could not be charged in several different cases rather than in one case for offences committed in different places at different times, notwithstanding that the offences were similar.

10. Having looked at the record of the trial court I arrive at the conclusion, without hesitation, that the Appellant did not get a fair trial due to the very many charges he faced, the offences having been committed at different places and times. His convictions cannot be allowed to stand and are hereby set aside. It is so ordered. It is unfortunate that he has already served his sentence.

DATED AND SIGNED AT NANYUKI THIS 14TH DAY OF SEPTEMBER 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF OCTOBER, 2021