



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CRIMINAL APPEAL NO. 101 OF 2013
BERNARD WANJALA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 1902 of 2010

in the Principal Magistrate's Court at Winam)

J U D G M E N T

1). The appellant was charged with the offence of Stealing contrary to section 275 of the Penal Code.

The particulars were that on the 14th day of September 2010 at Kondale area in Kisumu District within Nyanza Province jointly with others not before court stole 31 electrical poles worth 341,000/= shillings the property of the Kenya Power and Lighting Company Limited.

2). He was equally charged with the alternative count of Handling Stolen goods contrary to section 322 (2) of the Penal Code.

The particulars were that on the 17th day of December 2010 at Lolwe estate in Kisumu district within Nyanza Province otherwise in the cause of stealing dishonestly retained thirty one electricity poles knowing or having reasons to believe them to be stolen goods.

3). He was convicted on the alternative charge and sentenced to two years imprisonment hence this appeal.

4). The prosecution called two witnesses. PW1 Erastus Matete an employee of Kenya Power and Lighting Company (KPLC) was informed of the stolen poles. He was informed that the poles had been spotted at Lolwe. They went to the scene and found the same being loaded to a lorry. They arrested the appellant who apparently was the driver of the said lorry.

5). **PW2 P.C Simon Ikanyi**, corroborated PW1's evidence. He confirmed the lorry to be registration No. KBF 881N belonging to Kajulu Holdings Ltd. They arrested the driver. The said poles had the KPLC marks.

6). When put on his defence the appellant confirmed that he was an employee of Kajulu Holdings Ltd and that he had simply been told to go and transport the goods. He said that one Kamau brought him to

the site and disappeared.

7). I have perused the pleadings and the judgment of the lower court. I have also perused the written submissions of the parties herein. What runs across the appellant's petition of appeal is the fact that the appellant was a pure innocent employee of Kajulu Holdings and that perhaps the proper person who would have been charged were the owners of the lorry or at least employees of Kajulu Holdings. This sounds plausible but there is no indication that the appellant was indeed an employee of Kajulu Holdings. Apart from testifying that he was its employee and earning a salary of Kshs. 19,000/= nothing else was produced to suggest otherwise. In any case the appellant had the liberty of summoning his employer to prove this fact.

8). I do not also buy the argument that the standards of proof was lowered by the trial court as petitioned by the appellant. The two prosecution witnesses clearly established that the poles belonged to KPLC and had its seals on them, and that they were found outside the KPLC yard was not countered.

9). Consequently, and so as to save judicial precious time, I do not think this appeal is meritorious at all. The appellant was lucky to have mitigated sufficiently and have the court sentence him for two years instead of the maximum 14 years.

The appeal is hereby dismissed.

Dated, signed and delivered at Kisumu this 4th day of May, 2015.

H.K. CHEMITEI

JUDGE