



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 173 AND 174 OF 2013
(CONSOLIDATED)

1. LUKAS LAISA OLELAISA 1ST APPELLANT
2. EMMANUEL JOSHUA SAINI 2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 642 of 2013 of the Senior Resident Magistrate's Court at Shanzu – Hon. Gachie - **RM**)

JUDGMENT

The two Appellants above mentioned were Convicted and Sentenced to three (3) years Imprisonment for the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code.

The particulars of the charge were that:-

“On the 20th day of August, 2013 at around 3:00 a.m. at Kwa Bullo area in Kisauni Mombasa County, they jointly stole one Television make Augma flat screen 42inches, one GOTV Decoder and one amplifier all valued at Ksh. 85, 000/= the property of JABESS ODUOR”.

They pleaded guilty to the charge and were Convicted on their own plea.

Being dissatisfied with the Conviction and Sentence they now have lodged this appeal.

The grounds of the appeal are that the charge was defective as the money in issue was paid on different dates and different people.

Secondly, that the appellants did not understand Swahili language. Thirdly, that the facts did not disclose the offence of stealing as there was no ***mens rea*** and ***actus reus***. Fourthly, that the Sentence was harsh.

During the hearing of the appeal ground one was withdrawn.

A perusal of the lower Court file shows that the plea was taken in Kiswahili language. There was no indication that the Accused persons did not understand Swahili language but Masaai only. The facts were read to them and they admitted them.

The facts that were read to them indicate that they stole the above mentioned items the property of the Complainant and that when dogs started barking they were seen running and were chased with the help of Boda Boda riders and the stolen items recovered. The first Accused was a guard at the premises where the goods were stolen and the 2nd accused was his friend. There was ***mens rea*** and ***actus reus*** on the part of the two. They had the intention to steal and did steal.

I find the Conviction on the two was safe.

On the issue of Sentencing. The offence of stealing carries a maximum Sentence of three (3) years Imprisonment.

The two Accused persons were first offenders. The stolen items were valued at Ksh. 85,000/=. They were recovered. The Sentence of three (3) years was therefore harsh and excessive in the circumstances of this case. The Sentence of three (3) years imprisonment is reduced to eighteen (18) months for each appellant. They will now serve eighteen (18) months imprisonment from the time of their Conviction.

The appeal succeeds to that extent only.

Judgment delivered dated and signed this **13th** day of **May, 2014**.

.....

M. MUYA

JUDGE

13TH MAY, 2014

In the presence of:-

Learned Counsel for defence Miss Kipsang

Learned Counsel for the State Dzumo

The Accused

Court clerk Musundi