

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Criminal Appeal 89 of 2005

FRANCIS OWINYI MAKOKHA APPELLANT
V E R S U S
REPUBLIC.....RESPONDENT

J U D G E M E N T

The appellant was charged with the offence of Burglary and Stealing contrary to **section 304 (2)** and **297 (b)** of the Penal Code. The particulars of the offence are that the appellant and one Daniel Osore Okumu –

“On the night of 30th and 31st of May, 2005 at Imanga Buchifi Sub-location, Etenje Location in Butere/Mumias District within Western Province jointly with others not before the court broke and entered building namely a bar of EUBETA SALE with intent to steal there in and did steal One Solar battery, 24 water glasses, 2 Trays, one Harrican lamp, one Radio Cassette, 12 basins all valued at KShs.11,450/= the property of EUBETA SALE.”

He was also charged with handling suspected stolen property.

The appellant pleaded guilty. He was sentenced to serve 4 years imprisonment for both counts. The appellant filed this appeal and relied on his grounds of Appeal which are that he pleaded guilty to the charge, the language used was alien to him, he was not warned of the consequences of the plea, the environment was hostile and that he was physically and psychologically tortured while in police custody.

Mr. Karuri, learned State Counsel opposed the appeal and submitted that the plea was unequivocal. The charge disclosed the offence and the sentence of 4 years was not excessive.

The record of the trial court shows that the appellant pleaded guilty. His co-accused pleaded not guilty. The appellant testified as a witness for his co-accused as Defence witness Number 2. From his testimony he absolved his co-accused and stated that he never stole with the co-accused. He specifically stated while testifying as follows:-

“I was arrested and charged with the offence. I admitted and I was sentenced. The charge which I admitted should not be used to prosecute him.”

From the record, it is clear that this appeal is an afterthought and the same lacks merit. The appellant pleaded guilty and was convicted. He cannot now claim that the environment was hostile and the language was alien to him. The trial court did not indicate how the sentence was to run. I order that the sentence should run concurrently. Since the sentence is within the law I do find that this Appeal has no merit and the same is dismissed.

Delivered, Dated and Signed at Kakamega this 5th day of November, 2009

SAID J. CHITEMBWE

JUDGE