

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Criminal Appeal 90 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 28th and 29th of April, 2005 at Imanga Buchifi Sub-location, Etenje Location in Butere/Mumias District within Western Province jointly entered the dwelling house of JOAN KEYA with intent to steal and did steal (1) Gas Cylinder (2) Five Sufurias (3) Wall Clock (4) One mattress (5) A blanket (6) Two Bed Sheets (7) Bedcover (8) Purse (9) Cushion (10) A suit Case (11) A towel (12) Shawls (13) Sweater (14) Mosquito Net (15) One Dozen plates (16) Cups 6 Dozens (17) Table clothing (18) Thermos (19) Napkins 5 (20) One Curtain (21) Spoons (22) Certificates files all valued at KShs.24,180/= the property of Joan Keya.”

He was also charged with handling suspected stolen property.

The appellant pleaded guilty. He was sentenced to serve 16 months imprisonment for both counts and the sentence was to run concurrently. 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.

Mr. Karuri, learned State Counsel opposed the appeal and submitted that the plea was unequivocal. The charge disclosed the offence and the sentence of 16 months 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 1. 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 know my charge was read out to me and I pleaded.”

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. 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

J U D G E