

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO 254 OF 1993

GEOFFREY KAMUTI MUNYAOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Geoffrey Kamuti Munyao, was convicted after trial by the learned 1st Class District Magistrate, Taveta of the offence of shop-breaking and committing a felony contrary to section 306(a) of the Penal Code. Upon his conviction, he was sentenced to serve 5 years' imprisonment and ordered to receive 8 strokes of the cane. His appeal to this court is against conviction and sentence.

The evidence adduced in the court below is well set out in the Judgment of the learned trial Magistrate.

There is no dispute on such evidence that the shop of the complainant at Challa Trading Centre was broken into on the night of 29th and 30th November, 1991 and several shop goods valued at Kshs 30,000/= stolen from therein. On the following morning, the Appellant in company of two others posing as police officers approached one Francis Chalia (PW2) at his house with a request that he keeps for them the luggage, which they had. That baggage contained several shop goods. He agreed believing that the men were police officers.

On the same day, Pc. Johnstone Kabubei (PW.3) of Taveta Police Station came across the Appellant while carrying a carton box. He challenged him to stop and they did so and put down the said carton box. The Appellant then removed the jacket he was wearing and left it behind as he took to his heels, but his two companions were detained by the Police Officer. Inside the carton, which they had, there were several shop goods and inside the pockets of the Appellant's jacket, there were 6 weighing stones. All of these items were identified by the complainant as part of the items that had been stolen from his shop on the previous night. It was after the arrest of the Appellant's companions that they led the police officers to the house of PW.2 where they had kept part of the stolen items which were similarly identified by the complainant. The Appellant was finally arrested and PW2. Identified him as one of the 3 men who left the baggage containing the stolen items at his house. PW.3 also recognized him as the man who had ran away leaving behind the jacket containing the stolen weighing stones and other stolen items in a carton box.

The defence of the Appellant was simply that he had nothing to do with the said theft at the complainant's shop and that nothing was actually found in his possession.

The learned trial Magistrate in a carefully written Judgment disbelieved the Appellant that he had been framed and convicted him of the charge. Upon my own evaluation and consideration of the recorded evidence, I am satisfied that the conviction of the Appellant was based on sound and reliable evidence. There was evidence coming from PW.2 and PW.3 that he and 2 others who had earlier been arrested were the ones who had in their possession the stolen items from the complainant's shop.

This was just within a day of the said theft.

I am satisfied that the conviction of the Appellant was quite safe. I dismiss his appeal against same conviction.

The sentence of 5 years with 8 strokes in my view, was manifestly excessive. Even though the offence was serious, large parts of the stolen goods were recovered. I allow the appeal sentence. I set aside the sentence that was imposed and substitute thereof a sentence of 3 ½ years imprisonment with 3 strokes corporal punishment.

In the result, the appeal against conviction is dismissed while the appeal against sentence is allowed as hereinabove stated.

Dated and delivered at Mombasa this 4th day of September, 1995

S.O. OGUK

JUDGE