



REPUBLIC OF KENYA
 IN THE COURT OF APPEAL OF KENYA
 AT NAKURU
 Criminal Appeal 38 of 1995
 OMAR LOMOLION
APPELLANT

AND
 REPUBLICRESPONDENT

(Appeal from a judgment of the High Court of Kenya at Eldoret (Mr. Justice Aganyanya) dated 19th February 1993

IN
 H. C. CR. A. NO. 74 OF 1993

JUDGMENT OF THE COURT

The appellant was found guilty of the offence of stealing from a dwelling house occupied by No. 53064 P. C. Michael Kamau. The items stolen or taken away by the appellant are described in the charge sheet. He was also convicted of the offence of resist-ing arrest contra section 253 (b) of the Penal Code.

We see no difficulty in coming to the conclusion that the appellant was quite properly identified as the person who stole the items in question. The identification cannot be faulted as the appellant had enjoyed the hospitality of P. C. Kibego's wife and was seen by those who identified him. When he was being arrested he resisted arrest. After his arrest some of the stolen items were recovered. He was even found wearing some of the clothes stolen by him. As against positive identification (as regards which we have no doubt) the appellant made an unsworn statement putting for-ward a story of having been hit on the nape of his neck when he had a sum of shs. 25,000/= on him.

The improbability of the appellant's story and the positive identification made, leaves us in no doubt that his appeal to the superior court was quite properly summarily rejected.

We have no doubt also that the charge of resisting arrest was quite properly proved and that therefore the summary rejection of his appeal on that score proper.

On the charge of impersonation contra section 105(b) of the Penal Code, there was ample evidence to convince the trial court and this court that the conviction was proper. The conviction cannot be faulted.

The summary rejection of appeal in that regard was also quite proper.

As regards sentences meted out to the appellant we are of the view that the appellant's many convictions of offences of similar nature warranted the sentences he received. We do not see how the learned judge could have seen this otherwise and summary rejection of the appeal on the issue of the sentences was also quite proper.

In the result this appeal is dismissed.

Dated and delivered at Nakuru this is 27th day of February, 1996.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this a true copy of the original.

DEPUTY REGISTRAR