

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 58 OF 1987

MUTISO.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted on three counts of burglary and theft and sentenced to 9 months imprisonment on each plus three strokes of the cane. Having perused the 13 grounds of appeal I am satisfied that they constitute a challenge to the evidence produced against the appellant. In this appeal the appellant has indeed said that he was not satisfied with the evidence tendered against him. Looking at the record there was evidence by the three complainants showing their respective houses were broken into and various items stolen therefrom. The investigating officer PW 5 recovered a quantity of these items from the appellants house. There is no burden on the accused to give testimony or prove his innocence and indeed he gave no explanation as to how the said items came into his possession. The prosecution evidence was not challenged and I therefore accept it. I have perused the grounds of appeal but I do not see merit in them as the prosecution evidence was unchallenged. I am satisfied therefore that the convictions were proper and they are upheld.

Regarding sentence I observe that the appellant has two previous convictions one of which is relevant and is of the same type as the charges upon which the present convictions were based. The offences were committed on diverse days and in my view the learned trial magistrate acted correctly in imposing consecutive sentences. I will not disturb ,(missisng words)

Consequently the appeal against conviction and sentence is dismissed.

July 3, 1987

TORGBOR

JUDGE