

Okeyo v Republic

High Court, at Nairobi October 2, 1985

Mbaya J

Criminal Appeal No 495 of 1985

(Appeal from the Resident Magistrate's Court at Kibera)

Advocates

Appellant absent, unrepresented and not wishing to be present W Ngugi (Miss) (State Counsel) for respondent October 2, 1985, Mbaya J delivered the following Judgment,

The appellant was charged with burglary and stealing contrary to section 304 (2) and 279 (b) of the Penal Code. The particulars of the offence alleged that on July 28, 1984 at Kibera he broke and entered the house of Benina Wanja Karanja PW 1 from where he stole the items and cash specified in the charge and of the value of Kshs 1650. In the alternative, the appellant was charged with handling stolen goods contrary to section 322 (2) of the Penal Code, as it is said that he dishonestly handled one dress, one table cloth, one bed sheet and one lessa all valued at Kshs 360 the property of PW 1. The appellant was convicted on the substantive count and was sentenced to nine months' imprisonment and three strokes of corporal punishment. He appeals against the conviction and the sentence.

Having re-evaluated the recorded evidence, I am satisfied that the appellant was rightly convicted because he was found in possession of the complainant's PW 1's sweater which had been stolen from the complainants house when it was broken into. Again there the evidence that other items stolen from the complainants house were found in the appellants house when it was searched. According to the doctrine of recent possession, the appellant was either the thief or a handler of property he knew or had reason to believe were stolen. Thus I agree with learned state counsel that the conviction is safe. As the sentence is neither harsh nor excessive, I dismiss the appeal in its entirety.