



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO 624 OF 1982

**(From Original conviction and sentence in Criminal Case No 180 of 1982 of the Resident
Magistrate's Court at Kitui)**

PETER WAMBUA APPELLANT

VERSUS

REPUBLIC RESPONDENT

CORAM: PORTER AG J

Appellant absent, unrepresented,

M B Mbai (State Counsel) for respondent

JUDGMENT

The appellant in this case appeals against his conviction by the learned resident magistrate at Kitui in respect of a charge of burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the Penal code and against his sentence to a term of twelve months' imprisonment on the first limb and eighteen months' imprisonment on the second limb the prison sentences to run concurrently.

The two complainants live in the same house in Kitui. On March 18, 1982, PW 1 left her house at 7 pm and locked it and went to work. When she returned at about 12.30 am she discovered that the padlock had been broken and a lot of her clothes had been stolen. The other complainant who also returned at 12.30 am with PW 1 also had her items stolen. For some strange reason the appellant was charged with burglary and theft of the first complainant's items and simple theft of the second complainant's items. There was also an alternative charge of handling stolen property contrary to Section 322(2) of the Penal Code.

The accused was arrested by the chief of Matinyani location and handed to PW 3 on March 25, 1982 in respect of other offences than the one before the learned resident magistrate. He was taken to Kitui Police Station and there searched and the evidence of two of the police officers is that 15 photographs which were identified by PW 1 as hers and having been stolen in the theft from her house and also PW 1's radio permit which was also stolen from the same place were recovered from his trouser pockets. The accused made an unsworn statement and said that he had been arrested for being drunk and for being in possession of cannabis sativa. He said that he was shown some photographs at the police station which he knew nothing about and denied breaking into the house and taking the photographs.

The resident magistrate has considered in his judgment the possibility that these photographs were planted on the accused and for reasons carefully set out in the judgment has come to the conclusion that that did not happen. He has stated in his judgment that he is satisfied that the accused was in possession of the photographs and the radio permit when he was arrested. That was seven days after the date of the theft. Taking into account the particular items which are involved and the difficulty of disposing particularly of the photographs the period of seven days after the theft is not too long a period for the resident magistrate to apply the doctrine of recent possession which although he has not specifically said so he clearly has had in mind. The learned resident magistrate has considered all the grounds of appeal which are grounds of fact only.

He had the advantage of seeing the witnesses which I have not had and was in a far better position to come to the conclusion he did than I am. The accused was clearly found in possession of items stolen from the complainant and which were extremely well identified by her. There is no doubt that these photographs were stolen from her house and there was ample evidence for the learned resident magistrate to come to the conclusion that he did.

Turning to the question of the sentence the total effect of the sentence passed by the learned Resident Magistrate was eighteen months' imprisonment with four strokes. That sentence is proper in terms of the offence which the learned resident magistrate had considered and I can see no grounds to interfere with it.

Accordingly the appeal against conviction and sentence will be dismissed.

D C PORTER

AG JUDGE

13.1.1983