

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO 1074 OF 1982

(From Original Conviction and Sentence in Criminal Case No 2307 of 1982 the Senior Resident Magistrate's Court at Nairobi) 2nd Class District Magistrate M Kerna Miss

SAIDI KITA MUINDI APPELLANT

VERSUS

REPUBLIC RESPONDENT

CORAM: PORTER AG J

Appellant absent unrepresented,

K J Kinyanjui (State Counsel) for respondent

JUDGMENT

The appellant was convicted of burglary contrary to section 304(2) and stealing in a dwelling house, contrary to section 279(b) of the Penal Code. The complainant and his wife were woken up at about 2 a m on the 12th of September, 1982 by thieves who were pole fishing through their bedroom window which had been tied with a piece of cloth which the thieves had burnt in order to open the window.

Complainant woke his wife up and they went to the window and they saw the appellant and his brother by name Jimmy. They are neighbours with the accused and there is a security light outside the house which enabled them to see the accused clearly. The next day the complainant saw the accused and his brother and another man and told them that he had seen them stealing. The accused and his brother told him not to report to the police and they would return his things at 2 p m. However they refused to do so in the end and a report was made to Pangani police.

On the 15th September, 1982 PW3 was called by the complainant who had seen the accused and another man who was involved. He went to Eastleigh and found the appellant and another man. The appellant started to run away and was arrested. This was a clear identification by two witnesses in the light of the security light outside their house. It is clear that the learned magistrate when considering the identification was satisfied that it could be relied upon and that PW1 and PW2 were telling the truth. He clearly weighted the denial by the accused in his sworn statement against the clear evidence given by the complainant and his wife and was clearly satisfied that on the balance of the evidence that the prosecution's case was proved beyond reasonable doubt. For all those reasons I can see no reason to interfere with that finding.

Turning to sentence it can be said that the learned District Magistrate has been reasonably lenient with this appellant. The sentence is certainly not manifestly excessive and in all those circumstances I can see no reason to interfere.

For all the above reasons the appeal against conviction and sentence will be dismissed.

D C PORTER

AG JUDGE

24.2.1983