

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

crim app 457 of 83

MESHOLOLI OLE SANGALA.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

Appellant absent, not wishing to be present and unrepresented.

AR Rebello (Senior State Counsel) for Respondent

JUDGMENT

The appellant was jointly charged with another person on one main count of burglary and stealing contrary to Sections 304(2) and 279(b) of the Penal Code and on an alternative charge of handling stolen property contrary to Section 322(2) of the Penal Code (Cap 63). The appellant was eventually found guilty on the handling charge and accordingly convicted and sentenced to seven years' imprisonment hard labour plus five years' supervision by the police upon his release from prison.

The complainant Jackson Mwakoma Chola (PW 1) testified that on February 26, 1985 at about 8.30 pm he locked his house and went to visit a friend. When he (PW 1) came back the following day he found his house broken into and property stolen from therein. The Matter was reported to the police. On that same day (February 27, 1985) the appellant was found in possession of the property which had been stolen from the complainant's house. The appellant had no explanation to offer. From the above it is clear that the appellant's conviction was based on the doctrine of recent possession. Since the appellant was found in possession of stolen property only 24 hours after the house had been broken into the rebuttable legal presumption is that the appellant is the one who broke into the complainant's house and stole from therein. Where a court is faced with evidence of recent possession then the matter should be resolved in favour of the person charged by convicting him of the lesser offence rather than the more serious charge of handling stolen property which carries a minimum sentence of seven years' imprisonment.

Hence in view of the foregoing I find that the evidence on record supports the charge of burglary and stealing contrary to Sections 304(2) and 279(b) of the Penal Code. Hence I substitute the conviction on the charges of handling with that of burglary and stealing contrary to Sections 304(2) and 279(b) of the Code (Cap 63). The sentence of seven years' imprisonment hard labour and police supervision for five years is set aside. In its place the appellant is to serve a sentence of three years and two (2) strokes of the cane on each limb of the charge. The custodial sentences on the two limbs to run concurrently so that the appellant will serve sentence of three (3) years imprisonment and will receive a total of four (4) strokes of the cane. Only to that limited extent does this appeal succeed. Order accordingly.

Delivered at Nairobi this 25th day of November, 1983.

E O'KUBASU

JUDGE

25.11.83

coram: E. O'KUBASU

Mr Gatonye for Respondent

Appellant absent

ORDER: Judgment read and delivered.