



**Republic v Mawira (Criminal Case E603 of 2023)  
[2024] KEMC 111 (KLR) (27 March 2024) (Judgment)**

Neutral citation: [2024] KEMC 111 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
CRIMINAL CASE E603 OF 2023  
AT SITATI, SPM  
MARCH 27, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AMOS MAWIRA ..... ACCUSED**

**JUDGMENT**

1. The accused person denied the Main Count of breaking into a building and committing a felony namely stealing contrary to section 306(a) of the *Penal Code*. The particulars were that on 4<sup>th</sup> November, 2023 at an unknown time at Nkuene village within Imenti Central Sub-County of Meru County he broke in the office building of Mukuune Gakwere School with intent to steal and did steal therefrom a bag of beans weighing 90kgs, 2 light blue coloured plastic chairs all valued at approximately Kshs 11, 800 the property of Mukuune Gakwene School.
2. In the alternative charge, he denied the offence of handling stolen property contrary to section 322(2) of the *Penal Code*. The particulars were that on 7<sup>th</sup> November, 2023 at Nkuene village within Imenti Central Sub-County of Meru County otherwise than in the course of stealing dishonestly retained a bag of beans weighing approximately 90ks and 2 light coloured plastic chairs all valued at Kshs 11, 800 the property of Mukuune Gakwene School knowing or having reason to believe them to be stolen goods.
3. The accused person represented himself at the trial which was conducted by Prosecution Counsel Kimathi Kibiti.

**The Dpp’s Case**

4. PW1 Lucy Wambui Mputhia the Deputy Head-teacher of Mukuune Gakwene Primary School told the court that on 1<sup>st</sup> November, 2023 she left the school after securely locking up the offices and stores



- and went home. Then on 7<sup>th</sup> November, 2023 the local chief called her saying that there had been a break-in and theft at the school. She later visited the school and confirmed that 1 bag of Muchui beans and 2 plastic chairs had been stolen. She alerted the Board of Management of the School.
5. Upon being questioned, the night guard stated that the break-in and theft took place when he was off his shift. Private investigations were launched into the matter. A local bodaboda operator disclosed that he has spotted someone carrying goods matching the description circulated by the school. Eventually a suspect was arrested and brought to court after the stolen chairs were identified. The suspect led the arresting team to the shop where he had sold the stolen beans and 67kgs were recovered. The suspect was a parent at the same school.
  6. PW2 Joshua Kinyua M'mwamba told the court that he was the night watchman at Mukuune Gakwene Primary School. He added that on 4<sup>th</sup> November, 2023 at 630am he left his guard position and went home after confirming that the school property was secure. He returned at 5pm as usual for the upcoming night shift only for him to discover that the store had been broken and a bag of beans and plastic chairs stolen therefrom. He went to the next door neighbour and alerted him to contact the school deputy principal. This was done after the matter had been conveyed to the sub-chief.
  7. PW3 Anthony Mwenda Njagi told the court that he ran a furniture workshop in Meru town. He recalled that on the material date, the accused person delivered 2 plastic chairs and sold them to him for Kshs 700/= which he paid. Days later, the same accused person showed up with police officers and pointed out the 2 plastic chairs saying that he had stolen the 2 plastic chairs from the school's office. The police confiscated the 2 plastic chairs.
  8. PW4 Samson Mbae Festus Alias Muchuka told the court that he operated an Mpesa and cereals shop at the local centre. PW4 added that the accused person delivered to him a 90kgs bag of beans asking for a quick sale claiming that he needed the funds to pay for his ailing mother's medical costs. When making the payment, the accused person asked him to send the cash directly to the phone of another person on the ground that the accused person had no mobile phone at the time.
  9. A few days later, the accused person led police officers to PW4's shop where the partially sold bag of the same beans that the accused person had sold PW4 was recovered.
  10. In cross-examination, it emerged that PW4 was the one who insisted on an Mpesa transaction as opposed to cash.
  11. PW5 Moses Kanyomo M'ndegwa the Area Manager of Kirigara village told the court that on 9<sup>th</sup> November, 2023 he was asked by the local chief to escort police investigators to PW4's shop. He obliged and escorted the police over. On arrival, the police recovered the 67kgs bag of Muchui beans and confiscated the same after the shopkeeper disclosed that it was Amos Mawera who had sold him the beans. He also escorted the police to MWITI whose phone was the recipient of the cash sent by the shopkeeper in exchange for the beans.
  12. PW6 Joseph Mwiti Mungania told the court that he was the landlord of the plot where the accused person had rented a house. He added that on 5<sup>th</sup> November, 2023 the accused brought to the house a sack of beans and 2 plastic chairs on a hired motorcycle and kept them in the rented house. The hired motorcyclist left the scene as the accused person moved the goods into the house.
  13. PW6 told the court further that on the same day, he went to the cereals' shop run by PW4 and found the accused person negotiating with PW4 over the bag of beans which the accused person had moved from the house to the shop. Pretending that his mobile phone was spoilt, the accused person asked



PW6 to receive the money on his behalf and he agreed since he knew him well as his tenant. This made PW4 send Kshs 6, 000 for the bag of beans.

13. PW7 S/no. 237329 Inspector Samuel Nderitu investigated the case. He told the court that he recorded the witnesses' statements following the report by the Deputy Head-teacher made on 8<sup>th</sup> November, 2023. He added that on 9<sup>th</sup> November, 2023 the accused person was arrested by the local chief and handed over to the police. The suspect disclosed that he had sold the stolen beans to PW4 and the same was recovered by Inspector Nderitu. He also disclosed that he had sold the stolen chairs to PW3 and the same were recovered from PW3 by Inspector Nderitu. PW7 produced the recovered 2 plastic chairs and the bag of beans as PEx.1 -2.
14. At the end of his testimony, the DPP closed their case whereupon the court ruled that the accused person had a case to answer. He was put to his defence.

### **The Defence Case**

15. DW1 Amos Mawira gave sworn defence denying the charges. He told the court that on the material date an old man asked him to assist in the carrying of the bag of beans to a PW5 Joseph Mwiti and he obliged. He added that he demanded his wage for the porterage services but the said old man refused to pay forcing him to grab the 2 plastic chairs that the man had with him. He was surprised to be charged as presently. He closed his defence at that stage.

### **Issue For Determination**

16. The ingredients of the main charge including a break-in and stealing while in the alternative count, it is the dishonest retention of stolen property otherwise than in the course of stealing.

### **Determination**

17. The established evidence was that the theft took place on 5<sup>th</sup> November, 2023 at an unknown time of the day. The DPP has not provided the evidence of the broken store-room but has proved beyond any reasonable doubt that the stolen properties were recovered after 84hours following the theft. By this time-line, the court holds that this was a very short-time between the break-in, theft and recovery by the police. This short time brought into play the doctrine of recent possession was discussed in Lawrence Chamwanda & another v Republic [2016] eKLR (E.C. Mwita J.) where the learned Judge applied the doctrine of recent possession in the following manner:

31. The other reason why the trial court convicted the appellants was on the basis of the doctrine of recent possession because the appellants were found in possession of stolen property. Where a suspect is found with recently stolen property which is identified by the complainant to be his/hers and there is evidence that the property was recently stolen from the complainant, that can be a basis of a conviction for robbery with violence. On the issue of recent possession, the Court of Appeal stated in the case of Gedeon Meitekin Koyiet v Republic [2013] eKLR that the doctrine of recent possession is applicable if the prosecution proves :-

- a) That the property was found with the suspect,
- b) That the property was positively identified by the complainant,
- c) That the property was recently stolen from the complainant.



18. In the case of Samson Nyandika Orwerwe (supra), the Court of Appeal applied the principle in Gideon Keyiet (supra) and stated:-

“Our conclusion from these facts is that neither the trial court nor the first appellate court could be faulted for relying on the doctrine of recent possession in finding the appellant guilty. The motor vehicle had been recently stolen from PW1, and when it was recovered, the appellant was seen in it. It fell upon the appellant to offer an explanation as to what he was doing with the vehicle ...”

19. The DPP has proved beyond any reasonable doubt that the accused person who led the officers to the location of the stolen goods had had special knowledge of the exact location where the stolen chairs and beans had been sold to. It was only a person who knew of the stolen status of the properties who would know their exact destination of sale. In law such special knowledge pinpointed to the criminal liability of the accused person within section 111 of the Evidence Act providing thus:

111. Burden on accused in certain cases.

1. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:

12. Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.

13. In the accused’s defence, he fabricated a story about an old man giving him the property to carry for him. The correct position has been proved by the DPP and it was that the accused person handled stolen goods with the full knowledge of their stolen status. His defence is rejected on account of the overwhelming evidence. In the result, he is guilty as charged and is convicted of handling stolen goods under section 322(2) of the Penal Code since the DPP did not produce photographs to prove the break-in of the building. The conviction is made under section 215 of the Criminal Procedure Code. Right of appeal is 14 days.

**DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 27<sup>TH</sup> DAY OF MARCH, 2024**

=====

**HON. T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Present

Dpp Kibiti

Accused Person



Ronny Court Assitant

DPP: No prior convictions. First offence

Mitigation (In Kimeru) : I have 4 children. They are in a rented house/ 2 are in school and 2 are out of school. I have been in remand for 5 months.

Sentence: 28<sup>TH</sup> March, 2024. Convict remanded in custody.

