



**Republic v Muriuki & another (Criminal Case E146 of 2024)
[2024] KEMC 101 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 101 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CRIMINAL CASE E146 OF 2024
AT SITATI, SPM
JUNE 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK MURIUKI 1ST ACCUSED

BENSON MURIUKI 2ND ACCUSED

JUDGMENT

1. The 2 Accused persons were charged jointly with shop-breaking and stealing contrary to section 279(b) of the Penal Code. The particulars were that on 12th May, 2024 at 11300 hours Nduruma location within Imenti Central Sub-County within Meru County they broke into the shop of Lucy Kinanu and stole assorted shop goods and cash Kshs10,000/= all worth Kshs 19, 750.
2. In the alternative count, they were charged jointly charged with handling stolen goods contrary to section 322(2) of the Penal Code with particulars were that on 12th May, 2024 at 1130hours Nduruma location within Imenti Central Sub-County within Meru County otherwise than in the course of stealing dishonestly received or retained assorted shop goods belonging to Lucy Kinanu and stole assorted shop goods and cash Kshs10,000/= all worth Kshs 19, 750. Both accused denied the charges.
3. The Prosecution’s case was conducted by Kimathi Kbiti – Prosecution Counsel – while the 2 accused persons represented themselves.

The DPP’S Case

4. Lucy Kinanu Muriithi told the court that she operated a shop at Kithirune and that she had known the 2nd accused person Benson as a neighbour but that the 1st Accused Patrick was a stranger. PW1 said that on Sunday 12th May, 2024 at 9am she passed by the shop and after doing a few things closed it then went to the church service. While in the church, she received a call from Joel Mwenda alerting her that



her shop had been broken into. This made her to dash over whereupon she found that the report was true. Joel Mwenda had himself been alerted by Sasha Makena to call PW1 as she was the first witness. She found that the padlock and latch had been cut for the thieves to gain access. PW1 discovered that the thieves stole the following: cash Kshs 10, 000/= 10kgs sugar 10kgs rice 8kgs AJAB wheat flour 1 crate eggs 1 carton of milk Cooking oil 6 packets each 500ml Airtime Safaricom Airtime Airtel.

5. She added that the thief abandoned 1 packet of Ajab 2kgs wheat flour, 5 pkts milk and 5kgs maize flour during his escape. Following reception of this report PW1, Sasha Makena, Charles Murithi and the bodaboda man gave chase after the escapee using motorcycles and caught up with him at the Mariara River. The man was cornered after PW1 raised an alarm which was responded to by villagers who assisted PW1 and her team to arrest him. He had no stolen goods with him at the point of arrest.
6. When questioned by PW1 and my companions, he named Benson as the person who called him to execute the shop-breaking and stealing. This disclosure made PW1 to dispatch young men to trace Benson who was then arrested and brought to the police station. Benson disowned Patrick saying that Patrick was a complete stranger.
7. PW1 produced in evidence the stolen goods that the thief abandoned during the escape: Mount Kenya milk pouches – 4pks each 500ml POPCO Cooking oil 500ml – 1 bottle SOLAI maize flour – 5pks each 1kg 1 pkt of AJAB wheat flour – 2kgs
8. PW2 Sasha Makena told the court that on 12th May, 2024 she had gone to call her father Charles Murithi to go to church with her to church. On arrival at her father's house, she found the house broken into. The door's padlock had been cut. She did not see who had cut the padlock but found that the burner and gas stand were missing. She thus went to call her grandmother to alert her father about the discovery.
9. PW2 added that as she made her way back after alerting her grandmother, she stumbled upon Patrick inside Lucy's Shop. He was packing up goods while he was inside the shop. The shop door was open. She stopped look on and her father caught up with PW2 at the scene. When Patrick stepped out of the shop, PW2 asked him what his name was and he said "Muriuki". When she asked why he was packing up Lucy's shop stock, he said that Lucy had sent him to collect for an emergency but when he saw the arrival of PW2's father, he began to flee when the father said that Muriuki was a stranger in the area.
10. Sasha added that the man fled the scene after dropping the goods -cooking oil, wheat flour, milk and maize flour – but they gave chase after him using motorcycles and caught up with him around Mariara River. He was beaten by villagers who cornered him by the river. During the beat-down, he revealed his full name as Patrick Muriuki and named Benson as the person who had procured him to do that job. PW2 said that the said Benson was well known to PW2 as a neighbour.
11. PW3 Charles Murithi Kiruki Told the court that on 12th May, 2024 at about 11am he received a call from my in-law Halima Makena alerting him that his daughter had found his house broken into. He dashed out of church and went towards the house. On the way, he found his daughter PW2 by Lucy's shop and close by was Patrick .
12. He added that when his daughter asked him about his knowledge of Patrick , he told her that he was a stranger. PW3 added that no sooner had he said that the man was a stranger than the man dropped the shop goods and broke into a run. They gave chase after him and eventually caught up with him at Mariara River where he was beaten badly by villagers. The suspect was then taken to the police and the hospital then brought to court. The shop goods that he abandoned during the escape are here in court.
13. PW4 S/NO. 91707 Police Constable John Mbura testified as the investigating officer from the Githongo Police Station. He told the court that on 12th May, 2024 at 430pm the case was minuted



to him. At that time, 2 suspects were in custody at Githongo Police Station over the report of shop-breaking at Kithirune. Together with PC Napoya they visited the shop and found the door padlock interfered and a theft of assorted goods reported: cash Kshs 10, 000/=10kgs sugar10kgs rice8kgs AJAB wheat flour1 crate eggs1 carton of milkCooking oil 6packets each 500mlAirtime Safaricom worth Kshs 1, 500/-Airtime AIRTEL worth Kshs 950/-

14. Outside the shop, I recovered the following:1 pkt AJAB 2kg wheat flour5pkts SOLAI maize flour worth KSHS 400/-Cooking oil 1 tin5pkts milk 500ml
15. Some of the abandoned items that the fleeing suspect dropped were recovered by PC Mnburu who prepared an inventory and he produced these in court. Upon the interview of Patrick Muriuki he named Benson Muriuki as the mastermind. He also said that 2 others whose names he did not disclose were involved.
16. In cross-examination, PC Mbura admitted that he had no corroborative evidence against the 2nd accused person Benson who had been named by the 1st Accused Patrick . At the end of his testimony, the DPP closed their case.
17. The court then delivered a ruling on a case to answer whereupon it held that 1st accused person Patrick had a case to answer and is put to his defence. In the said ruling, the court held that the 2nd accused person Benson had no case to answer as no eye witness saw him participate in the shop-breaking and stealing and for the further reason that no one saw him to prove that he was in the company of the 1st accused person. Furthermore, there is no corroboration to connect him to the crime. He was named by Patrick and this amounted to accomplice evidence which the court treated with extreme caution in the absence of corroboration. The court held that there was no material recovered from Benson linking him to the joint-participation in the crime. In the Court of Appeal authority of *Karanja & Another Versus Republic (1990) eKLR* it was held as follows:
 2. Although there may be cases of an exceptional character in which an accomplice's evidence alone convinces the court of the facts required to be proved, the uncorroborated evidence of such a witness should generally be held untrustworthy for three reasons:
 - a. He is likely to swear falsely in order to shift the guilt from himself;
 - b. As a participant in the crime, he is an immoral person who is likely to disregard the sanctity of the oath;
 - c. He gives his evidence either under a promise of a pardon or in expectation of an implied promise of pardon and is therefore liable to favour the prosecution.
 3. The corroboration which is required of an accomplice's evidence is in the nature of some independent additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon.
 4. The corroboration evidence must affect the accused by connecting or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it.
 5. It is not necessary to have confirmation of all the circumstances of the crime in the corroboration. Corroboration of some material particular tending to implicate the accused is enough and it is sufficient if it is merely circumstantial evidence of his connection with the crime.



6. The appellants were convicted on uncorroborated evidence of accomplices hence their conviction was unsafe.”
18. In the result, the 2nd accused person Benson was acquitted of all the charges under section 210 CPC and is set at liberty unless otherwise lawfully held.

The Defence By 1st Accused Person Patrick Muriuki

19. He gave an unsworn statement admitting the charges. He closed his defence.

Determination

20. The established evidence was that the theft took place on 12th May, 2024 at 1130am. This was daytime and visibility was clear.
21. The further proved evidence showed that PW2 caught the 1st accused person in the act: he was inside the shop packing up assorted stolen goods. When questioned he dropped some of the goods and fled but was given chase and caught by Mariara River within minutes. Although the DPP has not provided a photograph to show the interference with the door's lock, there is direct evidence to show that the 1st accused person was inside shop and he carted off the goods but dropped them after a short distance. By this time-line, the court holds that this was a very short-time between the break-in, theft and recovery by the complainant. 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.

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 ...”

22. In his unsworn statement he offered no contest but admitted the charges. In the result, he is guilty as charged of count 1: shop breaking and stealing. He is convicted under section 215 of the [Criminal Procedure Code](#). Right of Appeal is 14 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 26TH DAY OF JUNE, 2024



HON. T.A. SITATI
SENIOR PRINCIPAL MAGISTRATE
GITHONGO LAW COURTS

Present

DPP Kibiti

Ronny Court Assistant

1st Accused Person Patrick

DPP: First Offender

Mitigation In Kiswahili: My wife, children, mother and sister depend on me. I was in bad company which I have broken off from. I will not re-join them. Forgive me.

Court: Presentence Report 4/7/2024. Convict r/c

