



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Director of Public Prosecutions & another (Criminal Case
E002 of 2025) [2025] KEHC 18201 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E002 OF 2025
TW OUYA, J
DECEMBER 4, 2025**

BETWEEN

KENNETH NYAGAH NJERU APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

*(Being an appeal from the judgment of Hon S. Atambo, CM delivered
on 30th January 2025 in Thika Criminal Case No. E2130 of 2021)*

JUDGMENT

1. The appellant herein had been charged with the offence of having or conveying suspected stolen property contrary to Section 323 of the Penal Code.
2. The particulars of the charge were that on the 6th day of August 2021 at Ngoma Tupu Theta Ward, Juja Sub-county within Kiambu County having been detained by PC Dahir as a result of the exercise of powers conferred by section 26 of the Criminal Procedure Code, had in his possession approximately 20 kgs of copper wires reasonably suspected to have been stolen or unlawfully obtained all valued at Kshs. 175,000.00.
3. The appellant denied the charge and the matter proceeded to trial. The Respondent called two witnesses while the appellant testified as the sole witness in his defence.
4. PW1 No. 92709 PC Daniel Saitet testified that he is a police officer stationed at Theta Police Station. It was his testimony that 6th August 2021 at 11.000am he received a phone call from his colleague James Kangora who informed him that someone was burning wires at Ngome Tupu in Theta ward. That he proceeded to the scene with PC Mohamed Dahir and found the appellant packing wires in a sack. Upon interrogating him, he failed to explain himself. He was arrested, arraigned in court and



- the wires produced as exhibits. On cross examination he clarified that the Appellant was stopped and interrogated because several residents had been complaining of theft of electric wires and that the appellant was found burning cable wires elicited suspicion.
5. PW2 No. 8786 PC James Kangate testified that he is a police officer stationed at Theta Police station. It was his testimony that on 6th August 2021, he received a tip off form an informer regarding a person who had been burning copper wire. Although he was not at the station, he instructed his colleague PW1 who informed him that he was already at the scene and had found the suspect with the electric wires. They arrested the suspect and booked hi in custody. On interrogation, the suspect informed him that he had bought the wires at Kirinyaga road at a shop called Twin kit electrical ltd. The suspect also gave him the receipt for payment. However, the receipt did not contain the quantity of wires. The suspect informed him that he had been dealing in scrap for over 20 years yet he ha no business permit nor license. PW2 did not find any logical sense in the act of buying electric wires and burning them, hence he opted to recommend the instant charges against the appellant. He decried the rampant theft of electric wires that had engulfed the area and urged the court to take stern warning to deter recurrence of such conduct.
 6. At the close of the prosecution case, the court found that the prosecution had established a prima facie case against the appellant. He was subsequently placed on his defence.
 7. The appellant gave unsworn evidence and testified that he is a mobile scrap dealer and that he had been framed. It was his testimony that he buys waste wires form people dealing with electric wires. He had about three sacks weighing 1.5 kg which he had bought from Mr. Maina. While he was burning the cables, a certain man asked him where he had found the cables and he asked him to mind his business. Shortly thereafter, police officers in plain clothes came and arrested him. He denied stealing anything.
 8. DW2 John Maina testified that he sells electrical goods wires and switches under the style of Twin Kit Electrica shop located at Nyamakima. He confirmed knowing the appellant as he usually sold to him cut wires. On 6th August 2021, he sold to the appellant three sacks of cut wires at Kshs. 40,000.00 and issued him with a receipt as a well as a delivery note. He stated that his shop is duly registered.
 9. At the close of the prosecution case, the appellant was found not guilty of the offence and acquitted under Section 215 of the Criminal Procedure Code. The court ordered that the exhibits be returned to the appellant.
 10. The appellant however insisted that the exhibits returned to him were less than that which had been seized by the police at the time of the arrest. The trial court summoned the OC Crime who explained that the seized exhibit was duly handed over to the appellant. The court also noted that having made a determination on the issue, it was now functus. Therefore, if the appellant wanted to reopen the case, he ought to file a formal application seeking to reopen the case for purpose of release of the balance of the exhibit.
 11. Aggrieved and dissatisfied with the ruling, the appellant lodged the instant appeal.
 12. The court directed that the appeal be canvassed through written submissions.
 13. The Respondent opposed the appeal urging that the here was no reason to disturb the finding of the trial magistrate since the exhibits that the appellant sought to be released were not in the custody of law enforcement. Reliance was placed on the case of Dickson Tasio Mukuba v Republic (2017) eKLR.
 14. The appellant on the other hand submitted that he stands to suffer harm if the exhibits are not returned to him.



15. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. See *Okeno v Republic* [1972] EA 32.
16. Section 177 of the Criminal Procedure Code provides thus:

Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

 - (a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or
 - (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.
17. It is therefore evident that the trial court has the jurisdiction to order release of property found in the custody of an accused person.
18. The main contention of the appellant is that although the trial court ordered that the exhibits be released to him, he only received a portion of the exhibits and not the entire seized quantity. The OC Crime on the other hand testified that all the seized property had been handed over to the appellant.
19. From the foregoing, the entire exhibits having been handed over to the appellant, there remained no other exhibits to return to the appellant. In the circumstances I agree with the Respondent's submission that Section 177 of the CPC envisages a situation where the property is still available and is in the hands of law enforcers. Clearly the alleged property is not in the hands of law enforcers nor is there evidence that the property is still available. See *Jonathan Ototi Agunda v Republic; East African Foundry Works Ltd (Interested Party)* [2021] KEHC 6512 (KLR)
20. In the end, this appeal fails and is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF DECEMBER, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Present at Thika.

For Respondent.....Kagama HB Ms Torosi for state.

Court Assistant.....Brian

