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Njoroge v Republic (Criminal Appeal E119 of 2023)
[2025] KEHC 19082 (KLR) (17 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19082 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL APPEAL E119 OF 2023

CW GITHUA, J

DECEMBER 17, 2025

BETWEEN

GEORGE NDEGWA NJOROGE .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being an appeal from the conviction and sentence by Hon. S.K. Nyaga (SRM) at the Kenol Senior Resident Magistrate's in Criminal case No. E149 of 2022 dated 31st October 2023)

JUDGMENT

1. The accused, George Ndegwa Njoroge was charged with several offences in five counts as follows;

   Count 1 – Obtaining money by false pretenses Contrary to Section 313 of the Penal Code.

   Count 2 – Carrying out electrical installation work without authority contrary to Section 152(1) of the *Energy Act* No.1 of 2019.

   Count 3 – Unauthorized disconnection of Electrical Apparatus Contrary to Section 169(i)(d) of the *Energy Act*.

   Count 4 – Stealing of Energy Equipment Contrary to Section 169 (i) (c) of the *Energy Act*.

   Count 5 – Stealing of Energy Equipment Contrary to Section 169(1) (c) of the *Energy Act*.

2. After a full trial, the appellant was acquitted of Count 1 to Count 4 but was convicted of Count 5. The particulars in Count 5 were that on unknown date and place within the Republic of Kenya jointly with others not before the court, the accused stole three prepaid meter Nos.37194959294; 37173339450 and 14272532954 all valued at Kshs.24,000 under control and property of the licensee, the Kenya Power.

3. Upon conviction, the appellant was sentenced to pay a fine of Kshs.5,000,000 and in default to serve 10 years imprisonment. He was aggrieved by his conviction and sentence hence this appeal. In his initial Petition and Supplementary grounds of appeal, the appellant faulted the learned trial magistrate for convicting him with an offence that was not sufficiently proved. He contended that the trial court erred in law and fact by failing to find that he was not properly identified as the alleged chase and arrest was shrouded in uncertainty. He also complained that the learned trial magistrate erred by meting out a minimum mandatory sentence without considering his mitigation.

4. . Briefly, the prosecution case was that on 22nd April 2021, PW1 Stephen Kioi Wanyoike discovered that four meter boxes were missing from his mother's rental building. He reported the matter to Kanjiru Police Station.

5. PW2, a security officer with Kenya Power and Lighting Company, Murang'a Branch testified that on 29th November 2022 at 8.30 a.m., he received a tip off from an informer that there was a man from Kahuro village who was installing pre-paid meters at a fee of Kshs.4,500. Accompanied by PW3, Cpl Jaxton Ndabuta, they were led to the homestead in which the suspect was installing the pre-paid meters. The homestead belonged to PW4 Selina Watiri. On arrival in the compound, they found the suspect who on seeing them dropped a black bag before fleeing towards some bushes. Upon chase by PW3 and members of the public, he was arrested. The arrested suspect was identified to be the appellant herein.

6. According to the evidence of PW2 and PW3, they searched the bag the appellant had dropped and in it they discovered several items including three pre-paid meter boxes Nos.37173339450 (Exbt4); 14272532954 (PExb5); 47194959294 (Pexbt7); some supply contracts and some tools. An inventory of the recovered items was prepared and was signed by PW2, PW3 and the appellant.

7. In the course of their investigations, PW2 and PW3 discovered that the meter box which the appellant had allegedly installed at Selina's house was owned by Elizabeth Wanyoike, PW1's mother. PW1 identified it as one of the four meters that had been stolen from his mother's rental premises on 22nd April 2021. He identified it because of its serial number which was 37194725240 (PExbt.2).

8. Upon being placed on his defence, the appellant denied having committed the offence as alleged and claimed that the charges were a fabrication by PW2 and PW3 who had a grudge against him. He claimed that the two officers had arrested him previously and charged him in the Kigumo Law Courts with similar offences after he refused to carry out an assignment they had given him.

9. The appeal was prosecuted by way of written submissions. The appellant who prosecuted the appeal in person filed his written submissions on 16th December 2024 while those of the respondent were filed on its behalf by learned prosecution counsel Ms Muriu on 17th March 2025.

10. This being a first appeal to the High Court, it is an appeal on both facts and the law. I am acutely aware of my duty as the first appellate court which is to exhaustively analyse and re-evaluate the evidence presented before the trial court and arrive at my own independent conclusion on whether the appellant was properly convicted and sentenced. In doing so, I should remember that unlike the trial magistrate, I did not have the benefit of hearing and seeing the witnesses and give due allowance for that disadvantage.

    See: Okeno V Republic (1972) E.A. 32.

11. Guided by the above principle, I have carefully considered the grounds of appeal, the rival written submissions filed by the parties and the evidence on record. I have also read and understood the judgement of the learned trial magistrate.

    Having done so, I find that the issues arising for my determination are twofold; namely

(i) Whether the charge in Count 5 was proved against the appellant beyond any reasonable doubt.

(ii) If the answer to issue No. (i) above was in the affirmative, whether the sentence meted out against the appellant was lawful.

12. Before addressing the first issue, i wish to state at the outset that in all criminal cases, the prosecution bears the burden and duty of proving the charge preferred against an accused person beyond any reasonable doubt. This duty does not shift and remains with the prosecution throughout the trial. It is trite law that an accused person does not have an obligation to prove his or her innocence.

13. When convicting the appellant, the learned trial magistrate stated at paragraph 32 as follows;

> " I note that no evidence has been presented to prove that the accused herein stole four (4) prepaid metre boxes valued at Ksh.32,000. However, in regards to count V of the charge sheet, the inventory produced as Pex-16 has indicated the accused was found in possession of 3 meter boxes; 37194959294; 37173339450 and 14272532954 which the accused did not state how he came into possession of the said meter boxes which George Ndegwa Njoroge signed and indicated his identity card number. The said metre boxes are the properties to Kenya Power"…..

14. Given the above extract from the trial court's judgment, it is evident that the appellant's conviction was based on the doctrine of recent possession. As correctly submitted by the respondent, the doctrine of recent possession is a rebuttable presumption that a person who is found in possession of recently stolen goods is either the thief or a handler of the same knowing or having reason to believe that the goods were stolen property unless he can sufficiently account for their possession.

See: Athumani Salim Athuman V Republic [2016] KECA 697 (KLR).

15. For the above doctrine to form the basis of a conviction, the prosecution must adduce credible evidence proving beyond doubt that the accused was actually found in possession of the goods in question and that the goods had been recently stolen from the complainant.

16. In this case, the evidence linking the appellant to the offence was the evidence of PW2 and PW3. They are the witnesses who claimed that when they approached Selina's homestead, the man who ran out of the compound but was chased and arrested was the appellant.

17. From the evidence of PW2, it is apparent that he did not participate in the chase and alleged arrest of the appellant. This is what he said in his testimony;

> " In company of CPL S. Ndaruta, we responded to the area and upon arrival, we met a gentleman who started running towards the bushes, he dropped a black bag as he ran, the residents managed to arrest him…."

18. On his part, PW3 claimed that he was among the members of the public who gave chase but he did not give details or describe the role he played in the chase and whether he was among the persons who arrested the appellant. For clarity, PW3 stated as follows;

> " we went to that homestead. He saw us and started running. He dropped the bag he had. We ran after him with help from the public he was arrested …."

He did not for instance claim that he was in the forefront during the alleged chase and that the suspect did not leave his sight from the time the chase started till the time it ended with his arrest.

19. The Court of Appeal in Silvian Ouma Owino & Another V Republic (2019) eKLR enumerated the conditions that must be fulfilled for a positive identification of an accused person based on claims of continuous chase and arrest. These are:

    (a) The suspect must be placed at the scene of crime and must be connected to the crime.

    (b) If the suspect runs away from the scene of crime, there must be a continuous chase.

    (c) The chase must never be broken and the person chasing, must never lose sight of the suspect up to the point and time of arrest.

    (d) There must be no intervening obstructions or interruptions during the continuous chase that cause the chaser to lose sight of the suspect.

    (e) There must be consistency of the identity of the suspect during the continuous chase. Therefore, the chaser must testify to a unique feature(s) of the suspect such as the clothing he was wearing or a distinctive physical feature(s).

    (f) If the evidence of continuous chase is given by more than one witness, they must all testify that the chase was continuous, uninterrupted and that they never lost sight of the same suspect by identifying the same unique feature(s) of the suspect such as the clothing he was wearing or distinctive physical feature(s).”

20. . In this case, the evidence that would have placed the appellant at PW4’s homestead where the chase started was shaky and incredible. PW4, the owner of the homestead gave contradictory evidence regarding her identification of the suspect who had introduced himself to her as George Njoroge from KPLC. In her evidence in chief, she claimed that she did not identify the man as she could not recall his physical features. She was unable to identify the appellant as the person she had contracted to install a token meter in her homestead. In fact, she claimed that she did not know him.

21. Surprisingly, a few minutes later during cross examination, she changed her position and identified the appellant as the person who had installed a meter box in her compound. This sharp contradiction casted a lot of doubt as to her credibility.

22. Besides the evidence of PW4, no other evidence placed the appellant in PW’4 homestead where the chase began. PW2 and PW3’s evidence did not prove that they participated in a continuous chase of the suspect and that they never lost sight of him until the time of his arrest; that the chase was uninterrupted and that the person arrested was the appellant.

23. In addition, none of the members of the public who participated in the chase was availed as a witness to testify on the identity of the suspect who was arrested after the said chase and the circumstances surrounding his arrest.

24. In view of the foregoing, it is clear that the appellants identification based on the evidence of chase and arrest did not meet the threshold set by the Court of Appeal in the Silvian Ouma Owino case (supra). This in effect means that his identification as the person who dropped a black bag in which three pre-paid meters and other assorted items were recovered was not established beyond all reasonable doubt.

25. Even if for the sake of argument the court was to accept the prosecution case that the appellant was the culprit who was chased from PW4’s home and arrested after dropping the black bag, it is my considered

view that the doctrine of recent possession on the basis of which the appellant was convicted was not applicable in this case.

26. My finding above is informed by the fact that the prosecution failed to adduce evidence to prove that the three pre-paid meters recovered from the bag had been reported stolen either from the Kenya Power and Lighting Company or from any other place. It is important to note that the pre-paid meter recovered from Selina's home No.37194725240 which had been stolen from Elizabeth's Wanyoike's rental premises was not among the three pre-paid meters recovered from the bag. The evidence on record did not therefore prove that the aforesaid three meters were in fact stolen property.

27. The appellant in his defence denied having committed the offence as alleged. He also denied having had anything to do with the black bag in which the three pre-paid meters were recovered. He claimed that he was framed with the offence by PW2 and PW3 due to their previous personal differences which led them to charge him in a Kigumo Court with similar offences.

28. It is worth noting that PW2 and PW3 admitted in their evidence that they had previously charged the appellant with related offences in the Kigumo Law Courts. These admission by the two prosecution witnesses gave some credence to the appellants statement in defence.

29. For the above reasons, it is my finding that the learned trial magistrate failed to thoroughly interrogate the evidence adduced before her in its entirety and misapplied the doctrine of recent possession and thereby arrived at the erroneous conclusion that the prosecution had proved the offence charged in count 5 beyond any reasonable doubt which was not the case.

30. For the above reasons, I have come to the conclusion that in this case, the prosecution failed to discharge its burden of proof by proving the guilt of the appellant as charged in count 5 beyond any reasonable doubt. There were many doubts in the prosecution case which ought to have been resolved in the appellant's favour.

31. Having found as I have above, I am satisfied that the appellant was not properly convicted in count 5. I find merit in his appeal and it is hereby allowed. His conviction is consequently quashed and sentence set aside. The appellant shall be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 17TH DAY OF DECEMBER 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

Appellant present

Ms. Muriu for the State

Ms. Susan Waiganjo, Court Assistant