

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E119 OF 2025

EDWIN AMAKOBÉ LUCHERA.....
....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. I. M Kahuya (SPM) on 24th July 2025 at Kibera Chief Magistrate's Court Criminal Case no. 1543 of 2023 Republic vs Edwin Amakobe Luchera)

JUDGEMENT

1. The appellant jointly with another not before this court was charged with four counts of breaking into a building and committing a felony contrary to section 306(a) of the penal code. After a full trial he was convicted on two counts of the offences charged. He was sentenced serve three (3) years imprisonment on each count to run concurrently.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his appeal he challenged the totality of the prosecution's evidence against which he was convicted. He argued that the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in **Okeno v. R [1972] EA 32,** the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions

of the trial court but bearing in mind that it never saw the witnesses testify.

4. PW6 Benard Kihara, testified that his office had been broken into on 23rd September 2023 and three laptops stolen. The incident was reported at Muthangari Police Station. He stated that he later identified the appellant as the person captured on CCTV footage from his office. On 4th October 2023, police informed him that two of the stolen laptops had been recovered.
5. PW8 John Hakem, the Human Resources Manager at Egypro, testified that on 22nd September 2023, he was informed by PW9 that their office had been vandalised. He reported the matter at Muthangari Police Station. Police officers visited the scene, itemised the stolen items, including laptops, a power bank, SSD drives, car keys and Kshs. 100,000, and collected CCTV footage. He later received information that two laptops and a power bank had been recovered.
6. PW9 Vesaf Kerlo, testified that he informed PW8 of the vandalism at the Egypro offices, which prompted the report to the police.
7. PW4 George Muthaka, testified that he dealt in laptops under the business name G-Tech Computers. He stated that on 22nd September 2023, he received a call from the appellant, through number 0727460131, offering auctioned laptops for sale. He agreed to purchase four laptops for Kshs. 90,000, which he paid via M-Pesa to one Harrison Kithuka on number 0727019296, as directed by the appellant.
8. On 4th October 2023, police officers, accompanied by the appellant, arrested him and required him to surrender the four laptops. He recovered the laptop sold to PW2 and handed all four

to the police. During cross-examination, PW4 stated that he had no documentary proof of prior dealings with the appellant but maintained that the laptops were purchased from him and paid for as stated.

9. John Kamau PW1, a motorcycle rider, testified that on 27th September 2023, while on duty along Kiambu Road, he was flagged down by a motorist driving a Toyota Fielder. He was requested to deliver cheques to the Co-operative Bank, Gigiri Branch, with payment to follow thereafter. PW1 complied and managed to bank one cheque, while the other failed. He was instructed to contact the drawer for further directions. He called the number provided, 0734604640, and was directed to deliver the failed cheque to Yaya Centre. Upon arrival, the phone was switched off. PW1 then proceeded to trace the offices of Beyda Tours and Travels, the drawer of the cheque, where police officers were called and he was arrested for handling stolen property.
10. PW2 Nakin Rahman, testified that on 3rd October 2023, together with PW3, he searched online for a laptop. He purchased a laptop, serial number SC96450JIK, for Kshs. 20,000 from PW4, who traded as G-Tech Computers at Bazaar Complex.
11. PW3 Moses Etibi, corroborated PW2's evidence, stating that they jointly searched for a laptop online and that PW2 purchased the laptop from PW4 under the stated terms.
12. PW5 Elvis Wamalwa, a motorcycle rider, testified that on 28th September 2023, while operating in Syokimau, he was flagged down by a motorist driving a Toyota Fielder registration number KBX 376X. He was requested to deliver three cheques, one to KCB and two to Equity Bank. He deposited the cheques as instructed

and thereafter attempted to contact the person who had engaged him for payment through numbers 0114173304, 0753515939 and 0734604640, but the calls were unsuccessful. He later received instructions to pick up a parcel at Serena. Upon arrival, he was arrested by police officers, questioned about the person who had instructed him, and escorted to TRM Mall, where they tracked the subject vehicle. They waited for the driver, who later arrived and was arrested.

13. PW7 Thomas Michira, testified that on 23rd September 2023, he was approached by his friend Kamau, who was in the company of the appellant. He was requested to draw three cheques on their behalf as they did not understand the procedure. He complied and was instructed to hand over the cheques to a rider for banking. He later stated that he was arrested after he was traced by the rider and police officers.
14. PW10 No. 83446 SGT Mwongela, the investigating officer, testified that he investigated the matter following a report from PW8. On 27nd September 2023, PW7 was arrested in connection with cheques stolen from Beyda Tours and Travels. PW7 led police to the appellant as the person who had issued the cheques and to PW1 as the rider dispatched to bank them. On 5th October 2023, a search was conducted at the appellant's residence, where a power bank branded "Egypro" was recovered. PW10 further testified that the appellant led police to PW4, from whom the stolen laptops were recovered. During cross-examination, PW10 stated that he conducted credible investigations.
15. At the close of the Prosecution case, the appellant was placed on his defence and elected to give sworn evidence without calling

any witness. He stated that on 5 October 2023 at about 10.00 pm, police officers went to his residence, conducted a search and confiscated personal items. He was thereafter taken to Capitol Hill Police Station, where he was informed that he was suspected of stealing laptops allegedly recovered from PW4, a person he stated he did not know prior to his arrest. He denied any involvement in the offences and maintained that the investigations were poorly conducted, noting in particular the absence of CCTV evidence allegedly linking him to the crime. On cross examination, he admitted that PW5 led police officers to his arrest but maintained that the case against him was fabricated.

16. I have considered the evidence and the submissions on record. I find that the issue in this appeal is whether the prosecution proved their case beyond reasonable doubt.

17. Section 306(a) of the Penal Code, provides:

“Any person who—

(a) breaks and enters any building, tent or vessel used as a human dwelling, or any building used for the custody of property, with intent to commit a felony therein;

... is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.”

18. The prosecution was required to prove that there was a breaking and entry into a building used for the custody of property, and that the breaking and entry was accompanied by an intention to commit a felony therein.

19. The evidence of PW6 and PW8 established that their respective offices were lawfully occupied premises used for the custody of

property, particularly laptops and related electronic items. Both witnesses testified that on 23rd September 2023 the offices were unlawfully broken into and laptops were stolen. The incidents were reported to Muthangari Police Station, and police officers visited the scene, documented the damage, and recovered CCTV footage.

20. PW6 testified that upon review of the CCTV footage, he identified the appellant as the person captured during the break-in. This evidence placed the appellant at the scene at the material time. The CCTV footage was collected by the investigating officer, PW10, as part of the investigations.
21. PW10 further testified that following investigations, stolen laptops were traced and recovered. Upon interrogation, the appellant led police officers to PW4, a laptop dealer, to whom he had sold the stolen laptops shortly after the break-in. PW4 confirmed that he purchased the laptops from the appellant and paid for them as directed. This evidence established recent possession of property stolen during the housebreaking.
22. The chain of custody was further supported by the evidence of PW2 and PW3, who testified that one of the recovered laptops had been sold to them by PW4. PW6 identified two of the recovered laptops as belonging to him, and the same were produced in court as exhibits.
23. The recovery of stolen laptops traceable to the appellant, coupled with his identification on CCTV footage at the scene of the break-in, formed a strong and consistent evidential link between the appellant and the commission of the offence. The manner of entry into the offices and the subsequent removal of

laptops demonstrated an intention to commit a felony at the time of the breaking and entry.

24. In his defence, the appellant denied involvement and alleged deficiencies in the investigations. However, he did not offer any plausible explanation for the recovery of the stolen laptops through him, nor did he displace the evidence placing him at the scene of the offence. His defence did not raise any reasonable doubt.

25. On the totality of the evidence, the prosecution proved beyond reasonable doubt that the appellant broke and entered offices used for the custody of property with intent to commit a felony therein. The trial court correctly evaluated the evidence and arrived at a proper conviction.

26. Accordingly, I find that the conviction for housebreaking contrary to section 306(a) of the Penal Code was sound in law and fact and is hereby upheld on both counts.

27. The appellant was sentenced to serve three years imprisonment on each count. During sentencing, the court considered his mitigation and that he was a first offender. The law provides for a maximum of seven years imprisonment if found guilty. In this case the court exercised discretion and I therefore see no reason to interfere.

28. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

Judgement dated and delivered virtually this 12th day of February 2026

D. KAVEDZA
JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

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