



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. E069 OF 2025

[Consolidated with Criminal Appeal Nos. 72 & 73 of 2025]

ANTHONY OKEMWA OBARE..... 1ST APPELLANT

WILLIAM SIMOTWA2ND APPELLANT

ROBERT ROBI.....3RD APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case NO. E151 of 2023 of the Chief Magistrate's Court at Migori by Hon. A.C. Munyony, Resident Magistrate)

JUDGMENT

1. The appellants herein were convicted of the offence of vandalism OF energy equipment contrary to section 169 (1) (b) of the Energy Act.
2. The particulars of the offence are that on the night of 18th and 19th day of May 2023, at Kowino area, Suna West sub-county within Migori County, jointly with others not before the court, they vandalized transformer serial number TX00369, make Tanalec, rated 50/11KVA and MEL/200.813 make Mahashakti, rated 200KVA, valued at Kshs. 1,050,000.00, the property of Kenya Power and Lighting Company, the licensee.
3. They were also convicted of the offence of stealing energy equipment contrary to section 169 (1) (c) of the Energy Act. The particulars are that on the night of the 18th and 19th day of May 2023, at the Kowino area, Suna West sub-county within Migori County, jointly with others not before the court, wilfully stole 50 kgs of transformer copper windings valued at Kshs. 50,000.00, the property of Kenya Power and Lighting Company, the licensee.

4. The appellants were each sentenced in count 1 to pay a fine of Kshs.500,00.00 in default to serve five years' imprisonment. In count two, each was sentenced to pay a fine of Kshs. 500,00.00, in default to serve five years' imprisonment. They were aggrieved and filed this appeal against the conviction and sentence. They raised grounds of appeal as follows:
 - a) The trial court erred in law by passing a harsh sentence to the appellant.
 - b) The trial court erred in law in placing on the appellant the duty or burden of establishing his own innocence.
 - c) The charge sheet was duplex, thus defective.
 - d) The trial court erred in both law and fact in failing to consider that an inventory was never produced as an exhibit.
 - e) That no prima facie case was established against the appellant.
5. The state did not file any grounds of opposition or submissions.
6. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court. I have concluded, having neither seen nor heard any witnesses. I will be guided by the celebrated case of **Okeno vs Republic [1972] EA 32.**
7. Section 169 (1) (b) and (c) of the Energy Act provides:

A person who wilfully—

(b) vandalises or attempts to vandalise energy installations and infrastructure;

(c) steals or attempts to steal any energy equipment or appliance or handles any energy equipment or appliance (otherwise than in the course of stealing) knowing or having reason to believe the equipment or appliance may be stolen, or dishonestly receives or retains the equipment or appliance, or dishonestly undertakes, or assists in its retention, removal, disposal or realization by or for the benefit of himself or another person or if he arranges to do so;

commits an offence which is deemed to be an economic crime and shall on conviction, be liable to a fine of not less than five million shillings or to a term of imprisonment of ten years or to both such fine and imprisonment.
8. The appellants contended that the charges were bad because they were duplex. On duplicity, the Court of Appeal for Eastern Africa held in the case of **CHERERE s/o GUKULI vs. REPUBLIC (1955) E.A. 478:**

Where two or more offences are charged to the alternative in one count, the count is bad for duplicity contravening section 135(2) of the Criminal Procedure Code. The defect is not merely formal but substantial. When an accused is so charged, it cannot be said that he is not prejudiced because he does not know exactly with what he is charged and if he is convicted he does not know exactly of what he has been convicted.

9. In this case, the offences were not included as a single count. Instead, they were charged in two separate counts, each representing a distinct offence under section 169 (1) (b) and (c) of the Energy Act. The two offences were not defective.
10. Anthony Okemwa Obare, the first appellant, was linked to the crime through the testimony of PC Kennedy Oduor Ongoye (PW4). He stated that the first appellant was detained by members of the public while carrying stolen copper windings from KPLC transformers. Police Corporal Thomas Mutua testified that, following a tip-off from members of the public, they arrested the first appellant while he was in possession of copper winding wires in a sack.
11. Wambura Moses Mwita (PW6) is a taxi driver. His evidence was that the first appellant approached him to ferry what he referred to as scrap materials. He directed him to follow a motorcycle to a house in Kowino, where he was to pick up luggage. He met the 2nd appellant and another, who has since paid the fine, and who did not appeal
12. They went to Awendo to wait for a buyer who never appeared. Before parting ways, they removed the copper wires from the gunny bag. They then took the goods into a house without paying him for his services. The next day, the first appellant visited his home with the first appellant. He was then arrested and taken to the police station, where he recorded a statement regarding the incident.
13. Apart from implicating the first appellant, this witness also testified to the presence of the second appellant at the time of the transaction.
14. Robert Robi, the third appellant, was not explicitly mentioned by the witnesses. However, Shasgai Ndiema Masibai (PW2) testified that he served as the night guard with Micah William Simotwa and Albert Lemiso.
15. Anthony Okemwa Obare denied any involvement in the offences.
16. William Simatwa stated that upon reporting for duty at approximately 5:45 p.m., he and his colleague, Robert Robi, conducted rounds to verify that everything was in order. The next

morning, when he reported off duty around 5:45 a.m., he again patrolled to confirm that all was in order. This was the defence of Robert Robi, his colleague.

17. Considering the strong evidence on record, the appellants' defence consisted only of denials. The trial magistrate was justified in dismissing this defence. The conviction was supported by solid evidence.
18. Although the appellants argued that the trial court erred in law by imposing a harsh sentence, the sentence was well below the minimum prescribed sentence. This was an illegal sentence. Since the respondent did not serve them with notice of enhancement, I will not interfere with it. Imposing it without the requisite notice would be unfair.
19. After analyzing the evidence on record, I find that the prosecution proved its case against the appellants to the required standards. The appeal is dismissed for want of merit.

Delivered and signed at Migori on this 25th day of February 2026

**KIARIE WAWERU KIARIE
JUDGE**