



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE (SUB-
REGISTRY)**

CRIMINAL APPEAL NO. E004 OF 2025

IBRAHIM MUCHACHA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

**(This is an appeal arising from the judgment/conviction
and sentence of Hon. Richard Koech in Criminal Case No.
726 of 202 delivered on 19th March 2025)**

1. The Appellant was charged with the offence of stealing contrary to section 268(1) as read with section 275 of the penal code. Particulars are that on 22nd day of September 2023 at Maji Mazuri village in Koibatek subcounty within Baringo county, with others not before court, the accused stole several

metallic pipes worth Kshs 40,000 the property of Benonin Kabiyeet water project.

2. Count 2 is the offence stealing goods contrary to section 322(1) (2) of the penal code. Particulars re that on 22nd day of September 2023 at Makutano centre in Koibatek subcounty within Baringo county, otherwise than in the course of stealing, the accused dishonestly retained metallic water pipes having reason to believe them to be stolen or unlawfully obtained.
3. By judgment delivered on 19th March 2025, the appellant was convicted of the main charge.
4. Being dissatisfied with the conviction and/or sentence, lodged the present appeal on the grounds set out in the memorandum of appeal dated 9th June 2025 on the following ground:-
 - a. That the trial magistrate erred in imposing harsh sentence.
 - b. That the exhibits presented to court were not his and that it is the complainant who was found with the exhibits.
 - c. That 3 of the witnesses who were from the same family collaborated to implicate him.
5. The appellant filed submissions while the prosecution responded orally.

6. The prosecution counsel submitted that the prosecution availed 8 witnesses who proved to court where the stolen items were recovered and that the water pipes were cut into 17 pieces and were recovered from scrap metal dealer and that it is the scrap metal dealer who led police to the persons who took the pieces of metals to him.
7. The prosecution counsel submitted that even though there were minor inconsistencies, they did not affect the prosecution evidence which was overwhelming. She submitted the appellant was convicted and fined kshs 200,000 in default to serve 2 years imprisonment. She submitted that the conviction was safe and that the maximum sentence for the offence is 3 years and urged this court not to with the sentence imposed by the trial court.
8. She urged the court to take into consideration the need to protect public property which the accused had vandalized and stolen and uphold sentence so as to deter other would be offenders.

ANALYSIS AND DETERMINATION

9. This being a first appeal, this Court is under a duty to re-evaluate and re-analyze the evidence on record and draw its own conclusions, bearing in mind that it did not have the advantage of seeing or hearing the witnesses testify.

10. The Appellant was convicted of the offence of stealing contrary to section 268(1) as read with section 275 of the Penal Code. The ingredients of the offence of stealing are that the property in question belonged to another person, that it was fraudulently taken or converted without claim of right, and that the taking was with intent to permanently deprive the owner of it.
11. From the evidence on record, there was no dispute that metallic water pipes belonging to Kabiyet Benonin Water Project were vandalized, removed and cut into pieces on 22nd September 2023. PW1 and PW2, who were employees of the water project, discovered that water was not flowing and upon inspection found that the pipes had been vandalized and removed. Their evidence was consistent and corroborated by PW3, a committee member of the project, who confirmed receiving the report and participating in the recovery of freshly cut metallic pipes from a scrap metal dealer's yard.
12. The stolen pipes were positively identified as property of the water project and were recovered shortly after the vandalism. The recovery of the pipes in cut pieces, coupled with evidence that they were freshly cut, clearly demonstrated unlawful taking and conversion of public property.

13. The Appellant's direct involvement in the offence was proved through the evidence of PW4, a scrap metal dealer, who testified that the Appellant personally contacted him, arranged delivery of scrap metals, and later arrived at the yard with additional metal pieces. PW4 knew the Appellant well as a fellow businessman and positively identified him. His evidence was further corroborated by PW5, the Mpesa agent who confirmed the withdrawal of money by PW4 in the company of the Appellant, and PW6, the motorcycle rider who assisted in offloading the metal pieces and saw the Appellant arrive at the yard.
14. The conduct of the Appellant after learning that police had visited PW4's premises was also telling. PW4 testified that the Appellant became unreachable after being informed of police visiting Pw4's scrap metal yard; he only resurfacing several days later with additional scrap metals and was arrested by PW7. This conduct was inconsistent with accused's innocence and strengthened the prosecution case.
15. The Appellant's defence amounted to a bare denial. While he admitted that he sold scrap metals to PW4 in 2023, he denied involvement on the material date. The trial court correctly evaluated this defence and found it did not displace the consistent and corroborated prosecution evidence.

16. On the allegation that witnesses were from the same family and collaborated to implicate the Appellant, the record shows that the prosecution witnesses were drawn from different backgrounds, including employees of the water project, a committee member, an independent scrap metal dealer, a motorcycle rider, an Mpesa agent, and a police officer. Their evidence was mutually reinforcing and not shown to be motivated by malice or fabrication. Mere familiarity or proximity among witnesses does not amount to proof of collusion.
17. Having re-evaluated the entire evidence, I am satisfied that the prosecution proved the charge of stealing beyond reasonable doubt. The conviction was therefore safe.
18. On sentence, the Appellant was fined Kshs. 200,000 in default to serve two years' imprisonment. The offence under section 275 of the Penal Code attracts a maximum sentence of three years' imprisonment. The sentence imposed was lawful and fell well within the statutory limits. Considering that the offence involved vandalism and theft of public utility infrastructure, the sentence cannot be said to be harsh or excessive. If anything, it was lenient.
19. An appellate court will not interfere with sentence unless it is shown that the trial court acted on wrong principles,

overlooked material factors, or imposed a sentence that is manifestly excessive. None of these grounds has been demonstrated in this appeal. From the foregoing, I see no merit in this appeal on both conviction and sentence. I have not seen consideration on period served in remand.

20. **FINAL ORDERS:-**

- a) The appeal against both conviction and sentence is hereby dismissed in its entirety.
- b) Period served in remand if any to be reduced from sentence as per section 333(2) of the CPC.

Dated and signed at **Nairobi** this 11th day of March 2026.



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R NGETICH

JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

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J.R. WANANDA

JUDGE

In the presence of:

Court Assistant – Brian Kamocho

Ms. Omari for DPP

Applicant present virtually from Eldama Ravine Prison.

No appearance for Advocate for Applicant.

ORIGINAL