

PROPERTY CRIMES II

Introduction

Offences covered in this chapter include:

- i. Housebreaking
- ii. Burglary
- iii. Arson
- iv. Malicious damage to property

HOUSE BREAKING

- House breaking is defined under section 304 (1) of the Penal Code:

304. (1) Any person who -

- (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or
 - (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof, is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.
- (2) If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.

- ***Anthony Kilonzo Mutuku v Republic [2019] eKLR*** the court noted the three scenarios dealt with in this offence:

(i) The first scenario in section 304(1)(a) requires proof that:

- the defendant broke into a building tent or vessel,
- such building, tent or vessel must be in use as a human dwelling place,
- the entry was with intent to commit a felony. The offence is complete as long as intent is proved even without committing any offence.

(ii) The second scenario in section 304(1)(b) requires proof that:

- the defendant was already inside the building, tent or vessel used as a human dwelling,
- the defendant had an intention to commit a felony and breaks out of the building. The offence is complete without necessarily committing an offence.

(iii) The third scenario still under section 304(1)(b) requires proof that

- the defendant was already inside the building, tent or vessel used as a human dwelling,
- the defendant committed a felony therein and then broke out of the dwelling place.

- See also ***Kamau Ngatia and Another v. R (1987) eKLR; Joseph Mburu Kariuki [2008] eKLR***

- It is also an offence to enter (without breaking) a dwelling house with intent to commit a felony

Dr. Evelyne Owiye Asaala

Criminal Law, International Criminal Law, Transitional Justice and
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305. (1) Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein is guilty of a felony and is liable to imprisonment for five years.

(2) If the offence is committed in the night, the offender is liable to imprisonment for seven years.

Definition of breaking

303. (1) A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting or any other means whatever any door, window, shutter, cellar flap or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any aperture of the building left open for any purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

ARSON

- S. 332 of the Penal Code:

332. Any person who wilfully and unlawfully sets fire to -

- (a) any building or structure whatever, whether completed or not; or
- (b) any vessel, whether completed or not; or
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (d) a mine, or the workings, fittings or appliances of a mine,

is guilty of a felony and is liable to imprisonment for life.

- *Arthur Muya Muriuki v Republic [2015] eKLR*

MALICIOUS DAMAGE TO PROPERTY

- S. 339 (1) of the Penal Code:

339. (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years.

- Section 339 (2) and (3): See the aggravated nature of punishment where the property in question is a dwelling house, and the life of a person is in danger or a railway
- *Republic vs. Jacob Mutuma & Another (2018) eKLR*: the offence not tied to ownership

EXTORTION

- Extortion is defined under section 300, Penal Code as follows:

(1) Any person who, with intent to extort or gain anything from any person

Dr. Evelyne Owiye Asaala

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(a) accuses or threatens to accuse any person of committing any felony or misdemeanor, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanor; or

(b) threatens that any person shall be accused by any other person of any felony or misdemeanor, or of any such act; or

(c) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid, is guilty of a felony, and if the accusation or threat of accusation is of

(i) an offence for which the punishment of death or imprisonment for life may be inflicted; or

(ii) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or

(iii) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or

(iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid, the offender is liable to imprisonment for fourteen years; and in any other case the offender is liable to imprisonment for three years.”

- It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.
- ***Mohammed Mohamud Akida v Republic [2013] eKLR***, the court simplified the elements of this crime as comprising two elements:
 - 1) fraudulent intention to extort or make a gain; and
 - 2) receipt of money from the complainant

Dr. Evelyne Asaala

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