



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 183 & 184 OF 2012

1. JUSTINE MWABILI MBACHU
2. STANSLAS EDWARD MJOMBAAPPELLANTS

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 737 of 2010 of the Senior Resident Magistrate's Court at Wundanyi – Orenge - RM)

JUDGMENT

The two appellants and two others were charged with stealing contrary to section 275 of the Penal Code. They were all Convicted after a full hearing and each Sentenced to four years Imprisonment. The two appellants have now appealed against Conviction and Sentence.

The state concedes to the appeal.

The stolen items in this case were water pipes. None was found with the appellants. No witness saw them stealing them. The pipes were found in the home of one scarer. This scarer was not one of the Accused persons nor was he a witness. One Mathias who was adversely mentioned by the prosecution witness and another by the name of Njore were not arrested as it is said that they escaped.

I do concur with counsel Miss Ogweno for the state that the role the appellants played in the theft of the water pipes is not clear.

The Conviction was not safe. It is quashed accordingly and the Sentence set aside.

They are set at liberty unless otherwise lawfully held.

Judgment dated and delivered his 6th day of August, 2013.

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M. MUYA

JUDGE

6TH AUGUST, 2013

In the presence of:-

Learned state Counsel Miss Ogweno

The Appellants present

Court clerk Mr. Musundi