



ORIGINAL

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 526 OF 2010

ISHMAEL KIRIGHA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 147 of 2010 of the Resident Magistrate's Court at Wundanyi – **Hon. F.K. Munyi - RM**)

JUDGMENT

ISHMAEL KIRIGHA hereinafter referred to as the Appellant was Convicted and Sentenced to four (4) years imprisonment for the offence of stealing contrary to section 278(A) of the Penal Code.

The particulars being that on 24th day of February, 2010 at Wundanyi township Taita–Taveta County jointly with others not before the Court stole one motor cycle registration number KMCG 058E valued at Ksh. 89,500/= the property of **RICHARD FUNDI TOMBOKO**.

The Complainant had entrusted his motor bike to one Chrispus Mwabili Kimonge (PW3) for transport business. Kimonge in turn hired out the motor bike to one Omar Mangaga (the first Accused).

The first Accused disappeared with the motorbike from 24th February, 2010 to 28th February, 2010 when he was spotted at Taveta with the motor bike which had its registration plate removed and another affixed. Upon interrogation he mentioned the 2nd Accused now the appellant in this case as the one who had hired him. He also testified in Court against him.

The trial magistrate relied on the evidence of this accused to convict the appellant. It is abundantly clear that there was no corroboration in this case. This appeal is conceded by the state and with good reasons.

I am satisfied that the Conviction was unsafe.

I accordingly quash the Conviction and set aside the Sentence.

The appellant is set at liberty unless otherwise lawfully held.

Judgment dated and delivered this **17th** day of **September, 2013**.

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M. MUYA

JUDGE

17TH SEPTEMBER, 2013

In the presence of:-

Mr. Ayodo for the state

Appellant in person

Court clerk Musundi