



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**CRIMINAL APPEAL 165 OF 2009**

**HERMAN WANJOHI KARIUKI.....**  
**.....APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**.....RESPONDENT**

**J U D G E M E N T**

The Appellant was charged before the Resident Magistrate Baricho with stealing of a motor cycle contrary to section 278A of the penal code. Particulars are as in the charge sheet. He denied the charge and the matter proceeded to full hearing. He was found guilty, convicted and fined KShs.60,000 with a default sentence of 4 years imprisonment.

Being aggrieved by the conviction and sentence he filed this Appeal. He proffered 8 home made grounds of appeal and supported the same with a written submission which he tendered to the court earlier on today.

The Appeal was conceded by learned counsel for the state and I allowed the same. I undertook to give my reason behind this judgment. In a nutshell, the prosecution case before the trial court was that the complainant and the Appellant herein knew each other well before the date in question.

According to the complainant, the appellant borrowed his motor cycle so that he could take a passenger to a place called Gathoge. He said he took the motor cycle to the Appellant and gave it to him in the presence of one Mwangi. The Appellant is said to have taken off and was not seen again until several months later when he was arrested and taken to the police station.

He was not arrested with anything incriminating as far as the complainant's motor cycle was concerned. The motor cycle was never recovered. The Appellant denied having taken the motor cycle from the complainant.

As rightly stated by learned counsel for the state, there was no eye witness in this case. The said Moses Mwangi was not called as a witness. There was no sufficient evidence that the complainant indeed gave the motor cycle in question to the Appellant. They did not reduce the transaction into writing and nor did they call any witnesses. It was the complainant's word of mouth against that of the Appellant.

In the absence of any other evidence, the court finds that the Appellant ought to have been given the benefit of the doubt and acquitted.

Having considered the above evidence and the grounds of Appeal raised, I find the conviction of the Appellant unsafe.

Accordingly, I allow this appeal and quash the conviction and set aside the sentence. The Accused is ordered to be set at liberty unless he is otherwise lawfully held.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 18<sup>th</sup> day of November 2010  
**In presence of:- The Appellant in person and Ms. Matiru for state.**