



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 30 of 2007

JOHN KANGETHE KINYANJUI.....APPELLANT

VERSUS

REPUBLIC.....REPUBLIC

JUDGMENT

The appellant was charged with the offence of housebreaking and stealing contrary to Section 304 (1) and 279 (b).

The appellant filed 4 grounds of appeal ready that he was not arrested at the scene of crime nor around there and that the stolen items were not in his possession, that there was contradictions in presentation evidence especially PW2 and that the police officer who arrested the appellant was not called to give evidence and also that the Trial Magistrate failed to consider his appellant. The Appellant also submitted in writing. When Trial commenced the state counsel Hon. Omwega informed the court that he was not supporting conviction and therefore he was conceding the appeal on the ground that the conviction was based on evidence of complainant himself.

PW2 and PW3 said he saw two men carrying things from the complainant's house. The two men entered the bushes. The 2nd accused was discharged when his case was withdrawn under Section 87 (a) Criminal Procedure Code. The evidence then against the appellant was given by PW1 himself a police officer who said he was informed that people were seen coming from his house carrying things. He went to his house and found his items missing. He further stated that appellant was his nephew who was of bad character.

PW1 did not witness the incident. The only evidence was that the robbers were seen getting into the bush. There is no clear evidence how the items were stolen. No one saw how the breaking in was effected or the stealing. PW3 said the items were found within a nearby forest while partially concealed with some bushes. It is clear however that the appellant was not found there as he says he was arrested at Makutano Market.

I agree with the State Counsel that the conviction was not reached upon satisfactory evidence. I find the prosecution evidence did not prove the case beyond reasonable doubt. And the Appeal hence conceded by stated I allow the appeal, quash the conviction and set aside the sentence. The appellant shall be set free forthwith unless otherwise lawfully held.

Dated this 14th May, 2008.

J. N. KHAMINWA

JUDGE

14/5/2008

Khaminwa – Judge

Njue- Clerk

Mr. Omwega for State

N/A for Appellant

Judgment read in open court.

J. N. KHAMINWA

JUDGE