



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA T KAKAMEGA

Criminal Appeal 69 of 2003

**(Appeal against both conviction and sentence of the Chief Magistrate's
Court at Kakamega in Criminal Case No.1396 of 2002, (A. O. Muchelule, CM)**

CHRISTOPHER AHUKOAPPELLANT

V E R S U S

REPUBLICRESPONDENT

J U D G E M E N T

On 7.3.2003, Christopher Ahuka, the Appellant, was found guilty and convicted of the offence of Burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the Penal Code and was convicted accordingly in Kakamega Cr. C. No. 1396 of 2002 before the Chief Magistrate.

The particulars of the offence were that the appellant with one Beatrice Kanaiza Kibisu who was acquitted

***“on the night of 24th November 2001 at Shitao
village, Shiakalo Sub-location, Bukhungu Location
within the Western Province, jointly with another
in court broke and entered into a dwelling house
of Patrick Sechero Ahuka with intent to steal from
therein (sic) and steal one knitting machine valued
at Kshs.60,000/= the property of the said Patrick
Sechero Ahuka.”***

The trial magistrate, A. O. Muchelule, sentenced him to 12 months in prison plus 2 strokes of the cane on each limb of the offence to run concurrently.

The evidence in the lower court was that the complainant, Patrick Sechero Aluka was the younger

brother of the Appellant's father and was in effect therefore his uncle. The evidence adduced before the trial court showed that the Appellant pawned the sewing machine to the second Accused for Shs.5,000/=. The Appellant's friend, one Samuel Omutuku who signed the agreement as the witness for and at the behest of the Appellant shows that it was because the Appellant had no I/D Card, that the Appellant introduced Samuel Omutuku to the second accused to witness the agreement and the handing over of the sewing machine to the 2nd Accused. Evans Lugalia, a friend of the 2nd accused was the 2nd accused's witness in the said agreement. He thought he was witnessing a sale agreement in which the Appellant was selling the machine to the 2nd accused. The sewing machine was found in possession of the Appellant's co-accused who surrendered it to the police. Her evidence against the appellant was however accomplice evidence and was valueless unless corroborated.

On 22.11.01 at about 7 p.m. Arnold Alwanyi found the Appellant, who was his uncle, (as he was his father's brother) carrying the sewing machine. There was moonlight and the machine was not covered. He later identified it as the stolen sewing machine he had seen. The Appellant denied having stolen the sewing machine and called no witness. He had no burden to prove his innocence. That burden reposed on the prosecution. The standard of proof required was proof beyond any reasonable doubt.

The appellant was seen by Arnold Alwanyi, his niece, carrying the sewing machine on 22/11/2001. His own friend and fellow footballer, Samuel Omutuku, testified that the Appellant had the sewing machine which he pledged to the 2nd accused, Beatrice Kanaiza Kibisu. Evans Lugalia, who was not known to the Appellant but was there at signing of the agreement when money changed hands testified that he was witness to the fact that the Appellant was selling the machine according to his understanding.

The circumstantial evidence on the Appellant's culpability was overwhelming and was consistent with the Appellant's guilt and inconsistent with his innocence. His possession and pawning of the sewing machine in the circumstances of this case could not be explained on any basis other than that he had stolen the machine. The finding of guilty by the trial Magistrate was well founded. It was supported by evidence. The appeal has no merit. The appeal is dismissed.

Dated at Kakamega this 16th day of March, 2005

G. B. M. KARIUKI

J U D G E