



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
APPELLATE SIDE  
CRIMINAL APPEAL NO. 375 OF 2002

(From Original Conviction and Sentence in Criminal Case No. 41 of 2002 of the Chief Magistrate's Court at Mombasa A.W. Ngugi RM)

THOMAS BAKARI ..... APPELLANT  
Versus  
REPUBLIC ..... RESPONDENT

J U D G M E N T

The Appellant was with another charged with the offence of house breaking and stealing contrary to Sections 304(1) and 279(b) of the Penal Code. The Appellant was also charged with the alternative charge of handling stolen property contrary to section 322(2) of the Penal Code. After trial the appellant was convicted of the alternative charge and sentenced to 31/2 years imprisonment. He has appealed against both the conviction and sentence.

At the hearing of the Appeal Mr. Monda, learned State Counsel, conceded the appeal on the ground that there was no evidence on record to prove that the Appellant knew the goods were stolen. I have perused the record and I agree with Mr. Monda that there was no evidence against the Appellant. Appellant used to stay with Accused one in lower court. Accused one who admitted having stolen the goods took the goods to the house where appellant was staying. There was no evidence that Appellant did anything with those goods. There was also no evidence that Appellant knew the goods were stolen or he kept or retained them. The goods were kept in the house by Accused 1 in the lower court.

For these reasons I find that the Appellant was wrongly convicted. I therefore quash the conviction and set aside the sentence. Appellant is to be set at liberty forthwith unless otherwise lawfully held.

**DATED this 20th day of March 2004.**

**D.K. Maraga**  
**Ag. JUDGE**