



**REPULIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 791 OF 2001**

**PETER MUNGAI MUIRURI ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The appellant was charged with the offence of stealing contrary to section 275 of the Penal Code. He was convicted and sentenced to imprisonment of two years. He appeals against both the conviction and sentence.

The facts behind the offence are that the appellant was at the material time a clothes' vendor. The complainant and the several witnesses in this case were also vendors. There is evidence that at the end of each day the appellant, the complainant and the several relevant witnesses kept their unsold clothes in a common store to which each held and kept a door key. On the material day the complainant found some of his merchandise missing. It was thought that the appellant took them. He was arrested and charged with the offence. The evidence on record only proved that the appellant had visited the store with a stranger who was not allowed to visit there. The accused was held responsible for the missing clothes although he all along denied stealing them. He agreed to compensate the complainant because the group decided that he was responsible due to the circumstances aforementioned.

The State conceded to the appeal. Miss Okumu felt that the evidence on record was merely circumstantial and left open several other reasonable and innocent explanations as to who took the missing stock.

I have considered the issues before me. I entirely agree with Miss Okumu and with Mr. Njore who represented the appellant. Several of the witnesses themselves each held a key to the store. Furthermore, the appellant denied the offence throughout. He only agreed to compensate the complainant under pressure. The evidence on the record failed to meet the required standard of proof in criminal cases.

The upshot is that this appeal succeeds. The conviction is quashed. The sentence of three years is set aside. The appellant who is on bond pending this appeal is hereby set at liberty unconditionally. It is so ordered.

**Dated and delivered at Nairobi this 25th day of February 2003.**

**D.A. ONYANCHA**

**JUDGE**