

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.364 OF 2000

**(From original conviction and sentence in Criminal
Case No.587/99 of the Senior Resident Magistrate's
Court at MOLO – J. KIARIE(S.R.M)**

JONATHAN MARITIME OLE SADERA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the conviction and sentence in S.R.M's Court Criminal Case No.587/99. He had been charged with STEALING MOTOR VEHICLE PARTS contrary to Section 279(c) of the Penal Code, convicted and sentenced to 7 years imprisonment and 7 strokes of the cane. The facts of the prosecution case were that a government tractor driven by PW1 and accompanied by PW2 got stuck on a road in Keptunga Forest. That the Appellant who was nearby offered to guard it overnight at a fee of 200/-. PW1 agreed. Next morning the Appellant informed PW1 and PW2 that some thieves had gone in the night and stolen a part. That the said people had threatened to kill whoever was guarding it and so he hid in the bush. He told them he recognised one of the two who stole and led to the arrest of his co-accused in the case. In defence the Appellant said he never stole and that his role was to guard his cattle not the tractor.

The Counsel for the State does not support the conviction on grounds that the evidence against him was purely circumstantial. In the famous case of PAUL -V- REP. 1980 KLR 100, it was held:-

“In a case depending exclusively upon circumstantial evidence the court must, before deciding upon a conviction, find that the inculpatory facts are incom - patible with the innocence of the Accused and incapable of explanation upon any other hypothesis than of guilt.”

The inculpatory facts in this case are not incompatible with the innocence of the Appellant. He waited for PW1 and PW2 to report the incident. He was co-operative with the police until the arrest of his co-accused who he said he saw steal the item with another. Unfortunately, the police bundled him and his co-accused without verifying the Appellant's story or even investigating the case. I do not find that the facts irresistably proves any guilt against the Appellant.

I find that the conviction was unsafe and quash it. I also set aside the entire sentence and order for the Appellant to be set free unless otherwise lawfully held.

Dated and delivered at Nakuru this 13th day of March, 2003.

JESSIE LESIIT

JUDGE