



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO.137 OF 2001**

(Being an Appeal from Original Conviction and Sentence in Criminal Case  
No.134 of 2001 Snr. Resident Magistrate Court at Taveta – G.M. Gogwe, D.M.I)

JOHN KINYANJUI ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

The Appellant was charged with offence of house-breaking contrary to Section 304(1) and stealing contrary to Section 279(b) of the Penal Code. He has filed this appeal complaining that the circumstances surrounding the case and the contradictory evidence is not satisfactory and further that the evidence was not sufficient to support conviction and sentence.

The prosecution evidence is that the complainant locked up his residence and went to his place of work. When he came back at 1.00 a.m. he found his door broken open. He left one man Isaack Mbugua guarding his house and he went to call police from Taveta Police Station two of whom came with him to scene.

They examined the outside of the house. They saw some shoe marks which led them to the house of the appellant. They got the house opened by the appellant who was inside. Inside was found property belonging to the complainant and his family. The appellant was arrested and exhibits taken to court.

In his defence the appellant denied that he was found with stolen items. I find the defence case unsupported and untrue. The prosecution evidence was clear. The witnesses were clear, truthful and reliable. In the circumstances where recently stolen goods are found in the possession of accused. The court is entitled to presume that the person found with the goods is the thief unless he gives a satisfactory explanation as to how he came by them. In the present case the appellant was found even with the title deeds not his but in the name of the complainant's father. He did not explain how he came to be with the items in his house. The court correctly came to the conclusion that the Appellant was the thief. The sentences meted out are lenient in all circumstances of this case and I see no reason to interfere. I find no merit on the appeal and the same is hereby dismissed.

**Dated at Mombasa this 15th Day of May, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

**Read in the presence of:**

**Mr. Gumo**

**Appellant.**