



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.19 2002

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.1726 of 2001 of the Resident Magistrate's Court at Mombasa – A.W. Ngugi, RM)

MILDRED LIVAHU OTUNGA ..... APPELLANT

Versus

REPUBLIC ..... RESPONDENT

J U D G M E N T

The appellant was working in the household of complainants PW.1 and PW.2. Sometime the complainants discovered that several items from their house were missing. This was after the appellant terminated her employment with them. She reported to the Nyali police station. Later on the appellant was found and was arrested. It is the evidence of the PW.3 who was her uncle that the items stolen were found with the boyfriend of the appellant after the appellant disclosed their whereabouts to him. All the items recovered were identified by the complainants as their property. The evidence of the PW.3 a relative of the appellant confirms her statement under caution which shows that she admitted the offence. It is clear that PW.3 was induced to disclose the information because the PW.2 had promised to withdraw the charge which PW.1 refused to do.

In the circumstances I find that evidence before the court was overwhelming against the appellant and uphold the conviction.

On the issue of sentence I find that this is a matter that could be punished under the provisions of Community Service Act particularly as the accused is a first offender. I therefore set aside the sentence imposed by the Trial Magistrate and direct that the appellant be put into Community Service Order Scheme for the rest of the sentence 28 months namely 840 hours.

**Dated at Mombasa this 16th Day of July, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**