

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLANT SIDE

CRIMINAL APPEAL NO.209 OF 2001

(Being an appeal From Original Conviction and Section in Criminal Case No.929 of 2001 of the Chief Magistrate's Court at Mombasa – R. Ndubi – RM)

JONATHAN KYALO APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The State does not support this conviction and sentence. Upon perusing the record it is clear that the provision of Section 380 Penal Code were not complied with. No evidence was led to support the charge as required under that Section. I agree with the State Counsel that the offence was not proved beyond reasonable doubt. In the circumstances I set aside conviction and sentence. The appellant shall be set at liberty forthwith unless otherwise lawfully held. Appeal is therefore allowed.

Dated at Mombasa this 21st Day of August, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE