



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.472 OF 2000**

**(From Original Conviction and Sentence in Criminal Case No.6103 of  
1998 of the Senior Principal Magistrate's Court at Kibera).**

**JOHN CHANGALA EMARY..... APPELLANT**

**versus**

**REPUBLIC.....RESPONDENT**

**PROCEEDINGS**

15-6-2000: Coram:Hon. Patel, J Tarus - court clerk Appellant present on Production Order Miss Makengu, State Counsel Court:

Hearing now on 20-6-2000.

Production Order extended till then.

**V.V. PATEL**

**JUDGE**

20-6-2000: Appellant present on Production Order Miss Marengu, State Counsel for Respondent Appellant:

I did not intend to abduct her. I wanted her to carry a bag for me. Makengu:

I support the conviction overwhelming evidence. The appellant removed the child from the uncle's, P.W.3) custody without his consent.

P.W.2 said that the child, (P.W.1) was crying. P.W.2's evidence corroborated that of P.W.1.

**V.V.**

**PATEL**

**JUDGE**

20-6-2000 .

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**J U D G M E N T**

This appeal is for allowing.

The whole question centres round the issue of mens rea.

The learned Lady State Counsel Miss Makengu argued that the evidence of the child (P.W.1) was corroborated by that of P.W.2. With respect, I do not agree.

The appellant explained the purpose for taking the child who he met on a road. The child confirmed it to be so.

P.W.2 was on a look out for trespassers and found the appellant and the child when they trespassed.

According to P.W.2 the child was crying at the time and the appellant was asking her to walk on.

The child never said in her evidence that she was crying and all that indeed that prosecution in the court below did not ask her any question about it. I note that in cross examination by the appellant, the child (P.W.1) said that the appellant did not beat her. That he simply asked her to go with him to carry a bag for which he was to pay her Sh.10/-, can one infer that the appellant intended to abduct the child to establish the charge? On the evidence it is not possible to say that the intent was there in view of the child's own evidence.

The appeal is allowed. The conviction is quashed, the sentence is set aside. The appellant be released forthwith.

**V.V. PATEL**

**JUDGE**

20-6-2000