



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 1516 OF 1993**

**ALI MALONZA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case No 1982 of 1993 of the Resident Magistrate's Court at Nairobi; G Nzioka (Mrs))**

**JUDGMENT**

The appellant, Ali Malonza (original A1) and 2 others were jointly convicted of the offence of store breaking and stealing contrary to section 306 (a) and 279(b) of the Penal Code. Upon his conviction, he was sentenced to serve 12 months imprisonment with one stroke corporal punishment on each limb to run concurrently. His appeal to this Court is against conviction and sentence.

There is no dispute on the evidence that was adduced in the court below that the complainant's stall No 177 within Kariokor Market had been broken into on the night of 23rd of March, 1993 and various clothings mentioned in the charge sheet valued as Kshs 157,650/- was stolen. The matter was then reported to the police and the night watchmen who were on duty on the material night who included the appellant herein were arrested and charged. None of them was found in possession of any of the stolen goods. Their conviction was mainly based on the testimony of a young boy, E M (PW2) aged 15 years old. He used to collect waste papers outside the market in company of friends for sale. He was staying with his grandmother at Huruma Estate but on the material night at about 9 pm, he testified that he saw a certain trailer come to the market and someone came out of the vehicle who went and talked to the watchman at the main gate who opened for him and they entered the market. On the following day when he learnt that there had been theft in the market, he implicated the watchmen who were on duty.

The evidence of this young boy (PW2) needed corroboration. He was still a minor and by his style of life as a parking boy of some sort, he was not reliable. There was no corroboration of his testimony and however concerning his story could have been, it was not safe to act on it and conviction in the absence of corroboration. Learned state counsel did not support the evidence of the appellant and I respectfully agree.

For reasons given, I allow this appeal, quash the conviction of the appellant and set aside the sentence that was imposed. I order that the appellant shall be set free and be released forthwith unless otherwise lawfully held.

**Dated and Delivered at Nairobi this 18th day of July 1994.**

**S.O.OGUK**

**JUDGE**