

REPUBLIC OF KENYA

Tokobitu v Republic

High Court, at Mombasa February 3, 1992
Mbaluto J

Criminal Appeal No. 508 of 1992

February 3, 1992, **Mbaluto J** delivered the following Judgment.

The appellant was charged in the court below on one count of stealing from the person contrary to Section 279(a) of the Penal Code and in the alternative with handling stolen property contrary to section 327 (2) of the Penal Code. After trial he was convicted of theft contrary to section 275 of the Penal code and sentence to 2 years imprisonment. His appeal to this court is against conviction and sentence.

The only ground against conviction urged before me was that the application of S. 179 of the Criminal Procedure Code to convict the appellant for theft contrary to section 275 when he had been tried for stealing from the person contrary to section 279(a) of the Penal Code was wrong in view of the fact that the appellant faced an alternative charge of handling stolen property. I do not think that submission has any merit. The operation of S.179 of the Criminal Procedure Code is not in any way affected by the manner the charge is framed. Further there is no authority for stating that the section does not apply where an alternative charge has been framed. That ground has no substance.

All the other grounds of appeal against conviction were abandoned.

As regards sentence the amount stolen was all recovered. The appellant was a first offender and was remorseful. He was the sole breadwinner of his family and he pleaded for leniency. In those circumstances, a sentence of 2 years imprisonment was harsh and excessive. The appellant has now been in jail for a period in excess of 6 months which I consider sufficient punishment for this sort of offence.

For the above reasons the appeal against conviction is dismissed but the appeal against sentence succeeds to the extent that the sentence is reduced to such a period as will result in the appellant's immediate release unless he is other wise lawfully held.