

REPUBLIC OF KENYA

Katana v Republic

High Court, At Mombasa March 4, 1992

Mbaluto J

Criminal Appeal No. 47 of 1992

March 4, 1992, Mbaluto J delivered the following Judgment.

The two appeals have been consolidated. The appellants were convicted in the court below of being in possession of instruments of house breaking with intent to commit a felony contrary to section 308(2) as read with section 304(4) of the Penal Code and each was sentenced to 1 years imprisonment. Their appeals to this court are against conviction and sentence.

The case for the prosecution is full of inconsistencies and contradictions and it is not clear who amongst the several people found sleeping on the mat under which certain instruments said to be used for house breaking was the owner of them. Further the prosecution failed to call a material witness namely, the owner of the house outside where the appellants were arrested. In my view there is considerable doubt as to whether these appellants committed any offence at all. I have no doubt that their conviction was wholly unjustified. Their appeals are allowed, convictions quashed and sentences set aside. They are to be set free forthwith unless otherwise lawfully held.