

REPUBLIC OF KENYA

Mweni v Republic

High Court, at Mombasa March 27, 1992
Omolo J

Criminal Appeal No. 209 of 1992

March 27, 1992, **Omolo J** delivered the following Judgment.

Janet Maria Mweni, the appellant herein was tried and convicted on a charge of theft contrary to section 275 of the Penal Code. It was alleged that on the 16th March, 1991 at 8 a.m. at Bristol Night Club Boarding and Lodging in Mombasa, she stole Shs.2,700/- the property of Augustus Toya Lewa.

Augustus (PW.1) met the appellant in a bar and they decided to spend the night together. It was alleged that August paid the appellant Shs.100/- and that while he was asleep, the appellant abandoned him taking with her his Shs.2,700/-.

There was very little evidence to show that Augustus had that money and where he had kept it. The only real evidence against the appellant was an allegation by PC. Peter Ng'ang'a (PW.2) that the appellant admitted to him that she had stolen the money and bought a dress with it. PW.2 alleged that the appellant showed him that dress. PW.2 being a police constable could not take any confession from the appellant and his evidence ought to have been ignored.

There was also the inquiry statement allegedly made by the appellant to Inspector Henry Momanyi (PW.3) and according to that statement, the appellant is alleged to have told the inspector "Ni kweli niliiba hizo pesa" Before admitting that statement in evidence the magistrate did not bother to find out from the appellant whether she agreed with IP.

Momanyi that the statement was voluntary. That is fatal to the conviction. There was no evidence upon which the appellant should have been put on her defence and in my view, the magistrate should have acquitted her under Section 210 of the Criminal Procedure Code. The learned Principal State Counsel is right in not supporting her conviction. I quash the conviction, set aside the sentence imposed on her and order that she be released from prison forthwith unless she is held for some other lawful cause.