

REPUBLIC OF KENYA

Thuo v Republic

High Court, at Mombasa March 3, 1992
Omolo J

Criminal Appeal No. 18 of 1992

March 3, 1992, **Omolo J** delivered the following Judgment.

I agree with Mr. Metho, the Learned Principal State Counsel, that the conviction of the appellant is unsafe and unsatisfactory. He was alleged to have stolen an arm of a shaving machine belonging to Francis Mwangi Njuguna (PW.1), the appellant's employer. The appellant admitted taking such an item, but his case was that he had taken it for repairs. When eventually arrested, the appellant led the police to some place referred to as a workshop by Constable Simon Opele (PW.4). In that workshop the arm of the shaving machine was found and the appellant's case was that that was the place to which he had taken the item for repairs.

The arm was produced in court but the complainant contended it was not the one allegedly stolen by the appellant. Two other employees of the complainant (PW.2 and PW.3) were apparently not shown that item in court so as to say whether it was or was not the same item the appellant had taken from the barber shop of the complainant. It was apparently being contended that the appellant sold the item he took from PW.1, but there was no evidence from anyone that the appellant had sold any such thing to him. The person owning the workshop from which PW.4 recovered the item was not called in Court to give evidence as to the circumstances under which the appellant had delivered the shaving machine arm to his workshop. As Mr. Metho rightly points out, it is not clear why the appellant would not steal the whole machine rather than the arm of it. I quash the conviction recorded against the appellant, set aside the sentence imposed on him and order that he be released from prison forthwith unless he be held for some other lawful cause.