

REPUBLIC OF KENYA

Chongo v Republic

High Court, at Mombasa May 7, 1992
Omolo J

Criminal Appeal No. 220 of 1991

May 7, 1992, **Omolo J** delivered the following Judgment.

The circumstances in which this appellant was alleged to have stolen a box from the dwelling house of PW.1 were very strange indeed. It appears that the appellant went to the house of PW.1 with a handcart for the purpose of stealing there. The appellant's contention before the magistrate was that he had transported some goods of PW.1 and another person and that PW.1 had promised to pay him for the transportation of those goods after the appellant came back from the house of the other man. Stephen Chivatsi Machoso (PW.2) admitted in cross examination that he had seen the appellant carrying makuti and that the appellant must have been doing so in his handcart. The appellant said he had transported makuti for PW.1.

Mr. Metho, for the Republic, concedes that the circumstances of the theft were strange and in my view, the story given by the appellant could as equally be true as that one given by the complainant. In other words the conflicting versions could well balance each other out. In the circumstances, I do not think the prosecution is entitled to say that it had proved its charge beyond a reasonable doubt. The magistrate should have resolved the benefit of doubt in favour of the appellant and acquitted him. I quash the conviction recorded against the appellant, set aside the sentence of 15 months imprisonment with one stroke of the cane imposed on him and order that he be released from prison forthwith unless otherwise lawfully held.