

REPUBLIC OF KENYA

Karisa v Republic

High Court, at Mombasa May 5, 1992
Omolo J

Criminal Appeal No. 236 of 1991

May 5, 1992, Omolo J delivered the following Judgment.

The appellant Abdalla Kazungu Karisa, was alleged to have stolen a bicycle belonging to Kadenge Charo Kenga, and the theft was alleged to have been committed during the night of 13th May, 1991.

In my view the story put forward by the appellant and his wife DW.1 was just as convincing as that put forward by the complainant Kadenge Charo Kenga (PW.1) and his brother-in-law Katana Karisa Fundo (PW.2). PW.1 stated he left his bicycle with his brother-in-law and that he did so at night. PW.2 stated that the bicycle was stolen from his house that same night and that he discovered the theft at around mid-night. There was no explanation as to how the theft was committed viz. whether the door into the house into which the bicycle was kept was broken or any such explanation. It was just baldly alleged that the bicycle was stolen from the house of PW.2 without explaining how the theft occurred. The explanation by the appellant and his wife was that it was PW.2 who took the bicycle to the appellant's house and asked the appellant for a spanner and dismantled the bicycle. He then left it there saying he would come for it the next morning. He did not come for it and DW.1 kept the pieces under the bed and in the ceiling because children were playing with them. The magistrate thought this was a lie, but PW.1 himself stated that he saw the children of the appellant playing with some parts of the bicycle and that was why he went and reported to police.

As I have said the story given by the appellant and his wife could have been true and in the circumstances, the magistrate ought to have given the benefit of doubt to the appellant. 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 is otherwise lawfully held.