

REPUBLIC OF KENYA

Muganga v Republic

High Court, at Mombasa May 8, 1992
Omolo J

Criminal Appeal No. 414 of 1991

May 8, 1992, **Omolo J** delivered the following Judgment.

After his trial before the Resident magistrate at Malindi, the appellant was convicted on a charge of stealing by a servant contrary to Section 281 of the Penal Code and it was alleged that on the 5th January, 1989 at Malindi township, the appellant being a servant of David Muchiri Mugo, stole from him Shs.4,410/- which came into the appellant's possession by virtue of his employment.

The appellant was an employee of David Muchiri (PW.1) and he had another workmate Abdul Idi (PW.2). both of them were selling eggs for PW.1. PW.2 alleged that between 1st and 2nd January 1989 he sold some eggs and gave to the appellant Shs.4,410/- to give to the complainant. PW.2 said he informed the complainant of this on the 5th January, 1989. Apparently PW.1 did not see the appellant again until the 3rd July, 1989 and it is on that date that for the first time, he reported the alleged theft of money to the police. The complainant did not attempt to explain what he was waiting for between 5th January 1989 when PW.2 informed him, and 3rd July 1989, when the appellant was arrested. The appellant's explanation was that he sold the eggs to some hotel and had given the invoices for the sell to PW.1. As Mr. Metho, for the republic, rightly says the delay by PW.1 in reporting the alleged theft to the police supported the appellant's contention that no theft had in fact occurred. The magistrate should have given the benefit of doubt to the appellant. The Republic does not support the appellant's conviction. 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 held for some other lawful cause.