

REPUBLIC OF KENYA

Opere v Republic

High Court, at Mombasa May 4, 1992
Omolo J

Criminal Appeal No. 412 of 1991

May 4, 1991, **Omolo J** delivered the following Judgment.

The conviction of the appellant on the two charges of theft contrary to Section 275 of the Penal Code cannot be supported. The appellant was an employee of one Georgio Baldini (PW.1), and that man alleged that the appellant stole various items from him. In his evidence in chief PW.1 even said the appellant stole Shs.50,000/- from him. There was no charge at all of the appellant stealing tht amount of money from PW.1. From the evidence of PW.1 himself it is clear that the house of the appellant was searched in the absence of the appellant. PW.1 says, and I quote:

“It is only the accused who had the access to the store. We went to look for him at his house. We did not find him. The police opened his house. They searched. Inside they found a mirror MFI.4, 3 knives MFI.5, pliers MFI.6, lighter MFI..7, torch MFI.8, spoon MFI.9, once watch MFI.10, Cigar MFI.11, one pen MFI.12, guarantee card for a watch MFI.13.”

It is clear from that passage that the house of the appellant was searched when the appellant was not there.

The appellant’s contention was that PW.1 wanted to get rid of him and that contention appears to be supported by the exaggerated evidence of PW.1 who even alleged the appellant stole a whole Shs.50,000/- from him. The magistrate ought to have considered the case more carefully, and if he had done so he might well have come to the conclusion that PW.1 might have framed the charge against the appellant. The Republic does not support his conviction. I quash the convictions, set aside the sentences imposed on him, and order that he be released from prison forthwith unless he is held for some other lawful cause.