



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAKURU

Criminal Appeal 45 of 1995

DAVID WAMBUA NGOLOCHOAPPLICANT

AND

REPUBLICRESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nakuru (Mr. Justice D. M.

Rimita) dated 16th September, 1994

IN

H. C. CR. A. NO. 6 OF 1994)

JUDGMENT OF THE COURT

The appellant was convicted of stealing from a locked motor vehicle contrary to section 279 (c)of the Penal Code and sentenced to three years' imprisonment and four strokes of the cane. His appeal to the High Court of Kenya at Nakuru (Rimita, J.) was dismissed. This a second appeal.

The complainant parked his car at the premises of Njoro Country Club at about 9.30 a. m. on 26th July, 1992. Inside the car he left a rain coat,compact cassettes, a golf bag and golf balls. He then locked the car was went away. When he returned at about 9.00 p. m. he opened his car and was surprised to find his driving licence on the driver's seat and some papers littered on the car's floor. On further checking he found a strange hat in his car. The complainant questioned the night guard who readily identified the hat as belonging to the appellant, a cook at the club. The night guard recalled that he had seen the appellant within the vicinity of the club at about 8.00 p. m. of the same night. When the appellant was arrested later that night at about 11.00 p. m. on his way to his house he was found carrying a bag which contained the complainant's missing rain coat, compact cassettes and a golf ball.

In his testimony during the trial the appellant in an unsworn statement denied the offence. He averred that the property in question was his and that the charge preferred against his was a frame up.

There is ample evidence accepted by the trial magistrate and the learned judge that the appellant was in recent possession of the complainant's missing property which he came by unlawfully. The trial magistrate's conclusion that the property belonged to the complainant is sustainable on the evidence.

Moreover, the appellant did not explain how his hat was found in the complainant's car.

In our view, this appeal is devoid of merit. It is hereby dismissed.

Dated and delivered at Nakuru this 28th day of September, 1995.

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL