

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

Makiata v Republic

Omolo J

June 4, 1992,

Omolo J delivered the following Judgment.

The Kiosk of Peter Kimuyu Mativo, was broken into at night and various items stolen therefrom. The following morning Peter (PW.1) and Jackson Kitusya, (PW.2) followed some tracks and according to them they found various items hidden in various "holes". The record of the district Magistrate is difficult to understand and it is actually impossible to tell what PW.1 and PW.2 recovered on their own and what was allegedly recovered with the aid of the Appellant. It would appear that another person was arrested in connection with the same offence, and was released by police on what was described as a P22. The evidence of the prosecution was so confused that the Appellant ought to have been given the benefit of the doubt. I quash the conviction recorded against him and set aside the sentences imposed. The appellant is to be released from prison forthwith unless otherwise lawfully held.