



REPUBLIC OF KENYA

Ngwoa v Republic

**High Court, at Mombasa August 31, 1992**

**Omolo J**

**Criminal Appeal No. 478 of 1991**

**August 31, 1992, Omolo J delivered the following Judgment.**

Mr. Metho for the Republic is right in not supporting the conviction of the appellant on the charge of stealing from a dwelling house contrary to Section 279(b) of the Penal Code. The complainant Mary Njeri Karanja (PW.1) was working at Malindi Hospital and she had a house in the staff quarters there. She also had another house at a place called Muyeye in Maweni and it was from that second house that her property was allegedly stolen. The complainant was not staying in that house and she stated in her evidence that there was another school boy called Charo who was looking after the house for her. That boy was not called to give evidence and say how the property of PW.1 were removed from her house. As Mr. Metho also rightly points out, there was no certain and clear evidence that the house in which Sgt. Joseph Kioko found PW.1's property was the house of the appellant. In these circumstances the prosecution failed to establish that it was the appellant who broke into the complainant's house and that he was in fact found in possession of the complainant's stolen property. I allow the appellant's appeal, quash the conviction recorded against him, set aside the sentence and orders imposed on him and order that he be released from prison forthwith unless otherwise lawfully held.