

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MACHAKOS

CRIMINAL APPEAL NO 167 OF 1987

MWANGAPLAINTIFF

VERSUS

REPUBLIC.....DEFENDANT

JUDGMENT

September 7, 1987 Torgbor J delivered the following Judgment. Appellant was convicted for stealing and sentenced to 2 years imprisonment for stealing two doors and three padlocks. In this appeal he complains that his case was not investigated and was given no opportunity to question the prosecution witnesses and in effect he denies the charge against him. I have considered the evidence on the record and I am satisfied that the appellant was properly convicted.

Appellant hired PW 3 a Matatu operator who transported the stolen doors to the house of PW 4 who also saw the vehicle arrive. The appellant had contracted to make doors for PW 4 but had failed to do so though he had been paid in advance PW 4 had reported to the assistant chief. It appears that shortly after the report was received the appellant had tried to remedy the situation. Unfortunately the doors he delivered to PW 4 were old ones and were positively identified by the complainant as his. The padlocks were not recovered. PW 5, son of PW 4 paid PW 3 the transporters of he doors and saw the appellant being driven away after the delivery.

On this evidence the participation in the offence by the appellant is in my view established and I find the conviction proper and it is upheld. The sentence appears severe however as the doors were recovered and the appellant was first offender. The said sentence is therefore set aside and replaced by a term of imprisonment for 12 months from the date of first sentence.

Order accordingly.

September 7, 1987

TORGBOR

JUDGE