

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

CRIMINAL APPEAL NO 255 OF 1987

MUTUACOMPLAINANT

VERSUS

REPUBLIC.....APPELLANT

JUDGMENT

October 19, 1987 Torgbor J delivered the following Judgment.

The appellant was convicted for housebreaking and stealing and sentenced to 18 months imprisonment with 4 strokes of the cane.

The main complaint in the appeal is that the alleged stolen items were not specifically identified by the complainant. The evidence bears out this fact and the only question then is whether the omission to so identify the stolen items was vital. Mr Nyaga does not support the conviction because he said the items in question were not identified and the implication is that he considers the omission to identify the items as fatal. I am inclined to agree with both counsels on this point.

But there is also the fact that the person who claimed to have seen the appellant enter the complainants' house was not called. It is surprising that the police investigating such an offence where a prospective witness has been disclosed to them failed to investigate interrogate that witness whose evidence might have been crucial.

For these omissions I am not satisfied that the remaining evidence on which the appellant was convicted was satisfactory. Consequently I allow this appeal and (missing words)

October 19, 1987

TORGBOR

JUDGE