

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO 347 OF 1987

OTIENOAPPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

November 19, 1987 Porter JA delivered the following Judgment.

The appellant was convicted in the court below for theft by servant contrary to section 281 of the Penal Code after trial and sentenced to 1 year's imprisonment.

He now appeals against conviction and sentence.

The appellant had been working for the complainant for 11 days as a tailor.

The complainant hired a sewing machine from the employer of PW 2, and the machine was picked up every morning by one of the fundis of the complainant. PW 2 used to take it to a kiosk for them to do that.

On November 4, 1986 PW 2 saw the appellant come to pick up the machine earlier than was usual, and he disappeared with it until he was arrested near his home in South Nyanza more than 6 weeks later.

The appellant denied having picked up the machine and said he had gone home after being paid to see after a sick brother, and then could not get back to Nairobi as he had no money.

The trial magistrate who saw the witnesses giving evidence and was able to assess their conduct was prepared to rely on the sole evidence of PW 2 as to the picking up of the machine, and pointed out that the appellant had disappeared at the time. In fact the appellant explained that although permission after only 11 days of work, but there was still the evidence of PW 2 which the trial magistrate believed that he had picked up the machine before he went. On my own assessment of the record has right to believe the evidence of PW 2 and so this conviction was safe and I shall not interfere with it.

Sentence was not manifestly excessive as the goods were not recovered.

Appeal against conviction and sentence is dismissed.

November 19, 1987

PORTER

JUDGE