

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL APPEAL NO 312 OF 1986

MULWA.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted for stealing handsaw and hammer and sentenced to 12 months imprisonment. State counsel does not support the conviction and I agree with him as it is not clear from the evidence that the appellant was the only person left behind to look after the said tools. Moreover the construction site from where the tools were stolen was not fenced and seemed accessible to the public.

The conviction is not safe and it is quashed as is the sentence. The appellant is to be released from prison forthwith unless otherwise lawfully held.

Order accordingly.

December 7, 1987

TORGBOR

JUDGE