

Macharia v Republic

High Court, at Nairobi November 17, 1986

Bosire J Criminal Appeal No 455 of 1986

November 17, 1986, Bosire J delivered the following Judgment.

The appellant Peter Maina Macharia was convicted of theft contrary to section 275 of the Penal Code, by a second class district magistrate, at Makadara, Nairobi, particulars being that on October 31, 1985 at Mbotela Estate, Nairobi, he stole one motor vehicle side mirror, valued at Kshs 120, the property of Waruguru Karanja (Waruguru). He was sentenced to two years imprisonment. He now appeals against the conviction and the sentence.

On the material date Mwangi Thumbi (Thumbi), found, the appellant removing a side driving mirror from motor vehicle KKH 231, which belonged to Waruguru. He suspected the appellant. He woke Waruguru up and together with two other people they went to the appellant's house who on demand produced Waruguru's motor vehicle side mirror and another one for an unknown motor vehicle. They arrested the appellant and escorted him to Jogoo Road Police Station.

In his defence, in the court below, the appellant denied he knew the reason for his arrest until the charge was read to him in court. He implied that the charge was framed against him. In his petition of appeal the appellant complains that he was convicted on insufficient and contradictory evidence. Also that the items he is alleged to have stolen was not produced as an exhibit. The appellant was caught red handed by Thumbi. He was ordered by Waruguru and Thumbi to produce the motor vehicle side mirror which he did. I find no merit in the appellants complaint that the evidence in support of the charge is both contradictory and insufficient. Waruguru knew the appellant before. They were neighbours. Thumbi had been seeing him, although he did not know him by name. He knew him by appearance. Admittedly, the side mirror which was produced in evidence was not the one the appellant was charged with stealing. Failure to produce it was not fatal to the conviction; the crucial aspect of the case being identification. The appellant's conviction is proper.

The sentence of two years is legal. It is appropriate considering the appellant's disgraceful criminal record. He has nine previous convictions, six of which are relevant. There is no merit in the appellant's appeal which I hereby dismiss in its entirety.