

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NYARANGI, GACHUHI & APALOO JJA)

CRIMINAL APPEAL NO 139 OF 1986

NJAUAPPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

September 18, 1987, Nyarangi, Gachuhi & Apaloo JJA delivered the following Judgment.

The appellant was charged with the offence of kiosk breaking and theft contrary to section 306(a) of the Penal Code. He was also charged with an alternate charge of handling stolen property contrary to section 322(1) of the Penal Code. His appeal to the High Court both on conviction and sentence was summarily rejected. He now appeals to this court on six grounds. He complains against the trial magistrate's judgment that there was no eye witness to state that he stole the goods.

There is evidence on record that he was arrested with stolen items. Other stolen goods were found in his house and photographed. The other people charged with him were acquitted although the third accused had described the goods as belonging to his brother. There is also evidence on record that when the youth winger found him, he ran away from there and dropped some goods. He also led the youth wingers to a house where there was a sufuria full of sugar.

The act of attempting to run away from the youth wingers is an indication of guilt. The allegation that he thought the youth wingers were thieves cannot be believed because the youth wingers in their pursuit and they were shouting thief thief.

The learned state counsel supports both the conviction and the sentence. Though the appeal should not have been summarily rejected. We have considered the appellant's ground of appeal but we consider that there was no miscarriage of justice in summarily rejecting the appeal. We proceeded to hear the appeal having held that the summary rejection which we set aside was wrong.

There is no merit in the appeal and we dismiss it.

September 18, 1987

NYARANGI, GACHUHI & APALOO JJA