



**Njoroge v Republic**

**High Court, at Nairobi June 19, 1985**

**Cockar J**

**Criminal Appeal No 171 of 1985 (Appeal from the Resident Magistrate's Court at Makadara, E Mugo, Esq)**

**Advocates Appellant absent, unrepresented, and not wishing to be present Miss L G Mbarire for respondent**

**June 19, 1985, Cockar J delivered the following Judgment.**

The only evidence against the appellant is that after he had been arrested by members of public with some items suspected to have been stolen he took the police to the house of a colleague of his where the goods detailed in the alternative count and belonging to the complainant were found. That is no evidence in a criminal trial that it was the appellant who had stolen them. He had merely volunteered to take the police to the house of the colleague, who had escaped arrest, where he said the remaining stolen items were. The items, subject matter of the alternative count, were not found in possession of the appellant. They were recovered at the house of his colleague, who had in fact stolen them is not known. The mere fact of pointing out his colleague's house where the stolen items were found does not make the appellant a possessor nor a thief. The learned state counsel does not support conviction. There is no evidence against the appellant. He is entitled to an acquittal. Appeal is allowed. Conviction is quashed and the sentence is set aside. The appellant is ordered to be set free forthwith unless otherwise lawfully held.