

REPUBLIC OF KENYA

Lumaded v Republic

High Court, at Nairobi (Appellate Side) July 30, 1985

Cockar J

Criminal Appeal No 982 of 1984

(Appeal from the District Magistrate's Court at Thika, S O Odak Esq, Criminal Case No 2280 of 1984)

Advocates

S R Chakava for appellant

W Ngugi (Miss) (State Counsel) for respondent

July 30, 1985, Cockar J delivered the following Judgment.

The appellant has been convicted of stealing contrary to section 275 of the Penal Code a sum of Kshs 1,973, the property of John Njuguna Mugo, between October, 1977, and September, 1978.

The complainant, PW 1, said that it was only after the appellant had left looking after the complainant's property that he checked and found that the water supply had been disconnected. He then found that the water-bills for which he used to give the appellant requisite funds had not been paid. He had to pay Kshs 1,973.40 to Thika Municipal Council to get the water supply resumed. He further said that the appellant had looked after his property and done the work of paying water bills up to early 1979. However one of his tenants PW 2 said that the appellant left in November, 1978. The water was disconnected after the appellant had left.

So the prosecution evidence, therefore, was that the appellant had left the job of looking after the complainant's property and of paying the water bills definitely by November, 1978, if not by early 1979 as claimed by the complainant. It is also the prosecution evidence that the water supply was disconnected after the appellant had left and the complainant had to pay a sum of Kshs 1,939.10 to get the water re-connected.

The evidence of PW 5 employed by the council as a cashier was that the said sum of Kshs 1,939.60 was paid by the complainant as follows :

1. Kshs 700.00 on July 7, 1978
2. Ksh. 1239.60 on September 8, 1978

The complainant therefore was not telling the truth that it was after the appellant had left working for him that he discovered that waster supply had been disconnected on account of non-payment of water bills and that he had to pay a sum of Kshs 1939.60 to reconnect the water supply. It was at least 2 months if not more after he had paid this sum that the appellant left his employment. The evidence of the complainant is unreliable and a conviction on such evidence is unsafe and cannot be supported. Appeal is allowed.

Conviction is quashed and the appellant is ordered to be set free forthwith unless otherwise lawfully held.