

REPUBLIC OF KENYA

Karinga v Republic

High Court, at Nairobi August 20, 1985

Schofield J

Criminal Appeal No 1696 of 1984 (Appeal from the resident magistrate's court at Kibera, P N Mugo Esq)

Advocates

Appellant absent, unrepresented and not wishing to be present

Miss W. Ngugi for Respondent.

August 20, 1985, Schofield J delivered the following Judgment.

While Njoroge Karinga was the fifth of seven accuseds convicted by a district Magistrate 1, Makadara of housebreaking and stealing from a dwelling house, contrary to section 304(1) and 279(b) of the Penal Code.

The complainant PW 1 Evans Michina Gichuki testified that in the afternoon of the August 15, 1984 he was visiting a tenant at a house owned by him at Westlands. He reached the compound and saw several people inside the compound he brandished a gun and arrested three people, the first three accused in court. On checking his house he found many of his household goods were missing and some were recovered nearby.

One of the arrested man directed him to a house near General Mathenge Drive and the complainant went there with his friend PW 2 Jeremiah Kaumbutha.

When they reached a garbage tip they saw four people they did not know. When the complainant asked them a question one man ran off and all four were arrested. The man who ran only after a chase. A search of the garbage revealed many documents and personal items belonging to the complainant. He met 4 people in Peponi Road. He was ordered to sit down and he was arrested.

There is doubt over whether the appellant was found with the other men next to the garbage where the complainant's goods were found. The learned magistrate misdirected himself when he said :

“They went to a place where 1st accused had directed them and found four people 4th and 5th , 6th and 7th accused sitting by waste paper dump site”

The complainant is recorded as saying :

“I went there with Jeremiah Kaumbutha and we found four people whom I did not know. They are 4th accused, 6th accused and 7th accused. I am not sure about the 4th suspect.”

In his examination in chief Kaumbutha was not called upon to identify any of the accuseds. When cross-examined by the 4th accused he said :

“I found you sitting down with three others 5th accused was a short distance from you.”

When cross-examined by the appellant – the 5th accused he said :

“You were with other.”

Taking all this evidence together there must be some doubt as to whether the appellant the 5th accused, was actually sitting with the other person arrested. In view of the learned magistrate’s clear misdirection the condition is unsafe and will be quashed. The sentence is set aside and the appellant, if still in prison and if held for no other lawful cause, will be released forthwith.