

REPUBLIC OF KENYA

Ngige v Republic

High Court, at Nairobi November 18, 1985

Mbaya J

Criminal Appeal No 1322 of 1984

(Appeal from the District Magistrate's Court at Nairobi, R M Desai, Esq)

Advocates

Appellant absent, unrepresented and not wishing to be present

Miss W Ngugi for Respondent

November 18, 1985, Mbaya J delivered the following Judgment.

The appellant was convicted of stealing contrary to section 275 of the Penal Code. He was sentenced to two years imprisonment. The prosecution case was that Eniud Kabeba PW 2 was at the counter of Kibichiku Bar situated along River Road, Nairobi. The witness testified that the appellant called at the bar on August 4, 1984 and asked for the regular bar attendant David Chege Ngige PW 1 who was not present. PW 1 is the complainant in this case. The appellant informed PW 2 that he (appellant) had come to collect some items he had left with PW 1. The appellant proceeded to a store near the bar from where he picked a bag containing some things. He left with the bag. The bag looked heavy. The bag and the contents belonged to the complainant. PW 2 informed the complainant on August 6, 1984 that his bag had been taken by the appellant. The appellant was known to PW 2 since he worked with the complainant the previous week for 2 days. When PW 1 later confronted the appellant about the missing bag and its contents, the appellant denied doing so. He was then arrested and charged with the present offence.

His defence and his ground of appeal now is an alibi.

There was ample prosecution evidence to support the conviction and displace the defence of alibi. Since the sentence is not harsh, excessive or unlawful, this entire appeal has no merit and is hereby dismissed.