



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL APPEAL 1327 OF 83**

**(From original conviction and sentence in criminal case No 3425 of 1983 of the Resident magistrate's court at Kibera: M A Ang'awa (Miss) Esq.)**

**JOSEPH GITHU.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**CORAM: O'KUBASU, J**

**Appellant absent, not wishing to be present and unrepresented L G Mbarire (Miss) (State Counsel) for Respondent.**

**JUDGMENT**

The appellant was convicted of housebreaking and theft contrary to Section 304(1) and section 279 (b) of the Penal Code Cap 63) and sentenced to three years imprisonment on each limb of the charge with 3 strokes of the light cane on the second limb. The sentences on both limbs were ordered to run concurrently. From the evidence on record the appellant was convicted on the evidence of a child of tender years one Francis Ndirangu who was described as a minor. This boy Francis Ndirangu (P W 3) testified that as he was talking to the appellant he (P W 3) "heard a radio inside his shirt".

"I saw outline of radio" When the appellant was caught and beaten that same day nothing was found on him.

Section 124 of the Evidence Act (Cap 80 Laws of Kenya) provides: "Notwithstanding the provisions of section 19 of the oaths and Statutory Declarations Act, where the evidence of a child of tender years is admitted in accordance with the section on behalf of the prosecution in proceedings against the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him" In this appeal the appellant was convicted on evidence of the young boy which evidence was not corroborated by any other material evidence in support thereof implicating him. Hence, I agree with the Learned State Counsel (Miss Mbarire) when she says that she is unable to support this conviction.

This appeal is therefore allowed, conviction quashed and sentences set aside. The

appellant is to be set at liberty forthwith unless otherwise lawfully held.

Order accordingly.

**Delivered at Nairobi this 24th day of May 1984.**

**E O'KUBASU**

**JUDGE**

