



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 574 OF 1982

MAWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged and convicted of stealing contrary to Section 275 of the Penal Code (Cap 63) in that he stole at Muthaiga Mini Market two cartons of Benson and Hedges Cigarettes valued Kshs 360. He was sentenced to one year's imprisonment. He appealed to this court against his conviction and sentence complaining that his case of stealing was planted on him, because he had gone to collect his arrears of salary amounting to Kshs 2,400. That no prosecution witness saw him stealing and that the witness who alleged that the appellant stole did not report to his employer about this theft while the appellant was in the super market.

This was a shoplifting case where the appellant was actually spotted by the supermarket lifting two cartons of cigarettes which he had on his person. He was ambushed as he walked past the cash counter. He was challenged and offered to pay for them, he had no money but asked the cashier to allow him to use the telephone. He was allowed but he was unable to contact his friend. Police were called and he was arrested while in possession of the cartons of cigarettes.

The appellant maintains that the charge was framed by the complainant because he, the appellant, had gone and demanded his three months' salary. Claiming that he had been the complainant's employee. If he had been he could have produced a letter of employment or any other document or witness to support his story. Neither the complainant nor his attendants (PW 2 and PW 3) knew the appellant. The trial magistrate refused his story and I am satisfied that she was fully justified in reaching that conclusion. Appellant was properly convicted. The appellant's appeal against conviction is therefore dismissed.

With regard to the sentence imposed on him by the trial magistrate, I think that in view of the value of the property attempted to be stolen and that the goods were recovered, the sentence of one year's imprisonment is manifestly excessive. I reduce the sentence of one year's imprisonment to eight months' imprisonment. Subject thereto the appellant's appeal against sentence is also dismissed. Appellant's appeal is dismissed.

Dated and delivered at Nairobi this 12th day of November 1982.

M.G MULI

JUDGE.