

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

crim app 67 of 83

(Coram: Madan & Kneller, JJ.A & Chesoni, Ag J A) CRIMINAL APPEAL NO 67 OF 1983

BETWEEN

MAINA KAMWERU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at Nakuru (Mead, J) dated 7th August, 1981
in**

Criminal Appeal No 439 of 1980)

JUDGMENT OF THE COURT

This Appellant Maina Kamweru was convicted together with two other accused George Mwaura Kamau and Karuga Kimanjuru Wachira, of church breaking and shop breaking, contrary to section 306(a) of the Penal Code. His appeal to the High Court was dismissed. On the night of 24th and 25th April, 1980 the Roman Catholic Church at Rongai was broken into and a silver cup and safe stolen therefrom. Also on the night of 24th and 25th April, 1980 the shop of Florence Wanjiru at Rongai Trading Centre was broken into and various shop goods stolen therefrom including one shirt which was later found by the police in the Appellant's house. The appellant claimed that he had bought the shirt and it was his property He produced a receipt in respect of it. Wanjiru also claimed the shirt, and although new, she identified it by a tear under an arm which she had repaired herself that it might be sold as she had not been able to sell it in its damaged state.

The Appellant made a voluntary statement to the police on 5th May, 1980 in which he admitted that he and his companions had broken into the church and shop and stolen property therefrom. The Appellant also led constable Kitonyi to where the silver cup was hidden in grass. The trial magistrate accepted Wanjiru's evidence that the shirt was her property. It therefore linked the Appellant with the shop-breaking.

To the extent necessary these factors corroborated the Appellant's statement which he repudiated and which was admitted in evidence after a trial within a trial. We cannot see any merit in this appeal. It is ordered to be dismissed.

Delivered at Nakuru this 7th day of October, 1983.

C.B. MADAN

JUDGE OF APPEAL

A A KNELLER

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL