



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OMOLO, LAKHA & OWUOR, J.J.A)

CRIMINAL APPEAL NO. 108 OF 2001

BETWEEN

GABRIEL NJERU NJIMUKO

APPELLANT

AND

REPUBLIC

RESPONDENT

**(Appeal from the Judgment of the High Court of Kenya at
Mombasa (Commissioner of Assize, Khaminwa) dated
19th December, 2000**

in

H.C.CR. APPEAL NO. 435 OF 1999)

JUDGMENT OF THE COURT]

Gabriel Njeru Njimuko was jointly charged with another with the offence of container breaking and stealing contrary to **section 279(g) of the Penal Code**. He was convicted and sentenced to seven years imprisonment with four strokes of the cane.

His first appeal to the superior court was dismissed. He has now appealed to this Court which can only entertain questions of law under **section 361(1) (a) of the Criminal Procedure Code (CAP 75)** Laws of Kenya. The particulars of the offence with which he was charged and convicted stated that

:"Between 27th June 1999 and 11th July 1999, in Kilindini Port within Mombasa District of the Coast Province, jointly with others not before court, broke into container number PCIU-230747-0 and stole from there-in seventy one (71) television sets make Soundmax LG Model CF-14D16 all valued at Kshs.1,192,800/= the

property of Kimago Clearing and Forwarding Company Limited.

Before us the only one point of law that was raised was with regard to the question of his identification as the person involved in the offence charged, but this point is a simple one and need not trouble us or detain us. This is because the appellant made an inquiry statement which was produced and to which he did not object. In that statement he admitted to have assisted the driver in carrying 28 television sets contained in cartons.

In these circumstances, his identification was not in dispute. The evidence against him was overwhelming. There is no merit in this appeal. The sentence imposed was lawful. Accordingly, the appeal is dismissed.

Dated and delivered at Mombasa this 24th day of January, 2002.

R.S.C OMOLO
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JUDGE OF APPEAL
A.A. LAKHA
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JUDGE OF APPEAL
E. OWUOR
.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR