



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
CRIMINAL APPEAL NO 994 OF 1984

(From Original Conviction and Sentence in Criminal Case No 156 of 1984 of the Resident Magistrate's Court at Thika, H R Aggarwal Esq.)

KIMANI NGAUAPPELLANT

versus

REPUBLICRESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO 995 OF 1984

PETER MWANGI KIMANI APPELLANT

v e r s u s

REPUBLIC RESPONDENT

CORAM ALUOCH (MRS) J
Karuga Wandai for Appellants,
C W Gatonye (Principal State Counsel) for Respondent
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J U D G M E N T

The 2 appellants Kimani Ngau and Peter Mwangi Kimani, father and son respectively, whose appeals were consolidated were jointly convicted of stealing, contrary to section 275 of the Penal Code, and each sentenced to 1½ years imprisonment. Each has appealed against both conviction and sentence.

Evidence on record revealed, that the clothes complained of as stolen and which were identified by the owner, were recovered from a store belonging to 1st appellant, and a house belonging to the 2nd appellant. Both appellants denied the offence, but were convicted after trial. However, during the trial, a brother of the second appellant, called as a witness, one Julius Omando, confessed to have stolen the clothes and kept them in the house he was occupying with the second appellant. Whether he did this to save the second appellant or not, I would not consider it an "explanation" given by the 2nd appellant within the meaning of the "Doctrine of Recent Possession of Goods." I just consider it as a "confession" given by a suspect, who should have been investigated further. But for whatever purpose, the confession was made, it obviously took away blame from the second appellant.

The evidence on record does not seem to point at the 1st appellant as one of those who stole the clothes. Rather, it was the recovery of clothes from his store, that must have caused his arrest. If Julius Omando confessed to stealing the clothes, then this appellant could have only handled the clothes. The evidence does not prove theft beyond reasonable doubt. Though there is strong suspicion against both appellants in this case, as having participated in this offence, the suspicions are however not proved beyond reasonable doubt, as such, I have decided to give them the benefit of doubt and all their appeals both, quash conviction set aside and order that each be released forthwith unless otherwise, lawfully held. Order accordingly. As for Julius Omando who confessed on oath to having stolen the complainant's clothes, I direct that he be investigated further.

J ALUOCH (MRS)

JUDGE

19/12/84



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