



IN THE COURT OF APPEAL FOR EAST AFRICA

AT NAIROBI

(Coram: Madan, Law JJA & Miller Ag JA)

CRIMINAL APPEAL NO. 34 OF 1978

BETWEEN

WILLIAM NYAMONDE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT

Madan JA The appellant was convicted and sentenced by the Senior Resident Magistrate, Kisumu for the offence of shopbreaking and stealing contrary to Section 306(a) of the Penal Code and his appeal therefrom was dismissed by the High Court at Kisumu (per Cotran J). The offence was alleged to have been committed sometime between noon and 6 pm on April 25, 1976 (a Sunday) after the owner had locked up the shop and left the premises. The Police were summoned to the scene the same day and found that glass vents above the wall of the shop had been broken and that entry into the shop was possibly thereby obtained and the goods in the shop ransacked. After ordering non-interference with the contents of the shop, the police continued their investigations the following day and uplifted seven fingerprints from a cabinet of drawers. It was satisfactorily shown by expert evidence at the trial that a left thumbprint collected amongst the seven sets of fingerprints corresponded with the left thumbprint of the appellant which was taken from him in remand prison after his arrest three months later. The question before us is whether this the only evidence purportedly connecting the appellant with the alleged offence was sufficient upon which to base his conviction.

In his defence the appellant claimed that his fingerprint was found on the cabinet because he had previously worked in the shop; but the shop-owner said that he had never seen the appellant before the trial. His fourth ground of appeal reads that he does not deny that the finger print was his but he may have placed it there as he used to visit shops as a taxi-driver to collect passengers.

It is well established that "identification by fingerprints by a person expert in such prints is allowed, and may be sufficient, even though it is the only evidence of identification" - Archbold 37th Edition, p 1009. The authority continues -

"The court has an overriding discretion to exclude such evidence and such discretion would be exercised in favour of the defence where the evidence has been obtained oppressively eg by false representations, by a trick, by threats or by bribes."

Both courts below considered this aspect of the evidence. We find nothing on the record on a second appeal to suggest that they may have erred in law in convicting the appellant. Indeed, we think that any reasonable court directing itself properly, would have come to the same conclusion. We therefore dismiss.

As **Law JA** and **Miller Ag JA** agree, it is so ordered.

Dated and Delivered at Nairobi this 19th day of December 1978.

C.B.MADAN

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JUDGE OF APPEAL

E.J.E.LAW

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JUDGE OF APPEAL

C.H.E.MILLER

.....

AG. JUDGE OF APPEAL

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