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| Case Number: | Criminal Appeal 36 of 1995 |
| Date Delivered: | 30 Nov 1995 |
| Case Class: | Criminal |
| Court: | High Court at Mombasa |
| Case Action: | Judgment |
| Judge: | Samwel Odhiambo Oguk |
| Citation: | Charles Kahindi Nzai v Republic [1995] eKLR |
| Advocates: | - |
| Case Summary: | <p>Charles Kahindi Nzai v Republic</p> <p>High Court, at Mombasa</p> <p>November 30, 1995</p> <p>Oguk, J</p> <p>Criminal Appeal No 36 of 1995</p> <p><i>Evidence - circumstantial evidence – where evidence points to guilt of accused – whether it can sustain conviction.</i></p> <p>Summary of The Facts</p> <p>The appellant was tried and convicted of the offence of shop-breaking and stealing contrary to section 306 (a) of the Penal Code. He was sentenced to serve 2 years imprisonment and ordered to receive 8 strokes of Corporal punishment. The prosecution case was to the effect that the appellant was at work as a security guard on the night of 18.6.1994 when the supervisor, Nicolas Wambua found him on duty about midnight and that everything was in order. At about 4 am, police received report that the shop in which appellant was guarding had been broken</p> |

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| | <p>into and he (the appellant) was not at work.</p> <p>The appellant stated that he reported to work and taken to another ground from CSS, who took after his duties and excused himself since he was sick. He stated the time to have been about 10 pm.</p> <p>Held:</p> <p>1. The conduct of the appellant and the circumstances in which the theft took place pointed to him to have been party to theft that took place.</p> <p><i>Appeal denied.</i></p> |
| Court Division: | Criminal |
| History Magistrates: | - |
| County: | Mombasa |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Appeal denied. |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |
| Sum Awarded: | - |
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO 36 OF 1995

CHARLES KAHINDI NZAIAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The Appellant, Charles Kahindi (Original A.1), was convicted after trial by the learned Resident Magistrate, Mombasa of the offence of shop-breaking and stealing contrary to section 306 (a) of the Penal Code. Upon his conviction, he was sentenced to serve 2 years imprisonment and ordered to receive 8 strokes corporal punishment. His appeal to this court is against conviction and sentence.

Briefly, the prosecution case was that the Appellant who was a security guard with Private Guard Limited, was on the night of 18th of June, 1994 assigned the duties of guarding the complainant's shop known as Delta Ltd along Haile Selassie Avenue, Mombasa. He reported for duty in the evening of that day and at about midnight when his supervisor, Nocolas Wambua (PW.2) was going round checking the guards he found the Appellant on duty at his place of work and everything were then in order. On the same night, Pc. John Kamau (PW.4) of Central Police Station received a report from the 999 Controller that Delta Shop premises had been broken into and certain items stolen.

This was at 4 a.m. He and other police officers proceeded to the scene and found the shop broken into and several items were scattered but the night guard, the Appellant was then nowhere to be seen. At about 5 a.m the supervisor, Nocolas Wambua (PW.2) in his usual rounds visited Delta Shop and found it having been broken into but the Appellant who was the guard on duty was nowhere to be seen.

The complainant, AZIZ MUSSA (PW.1) confirmed on the morning of 18th of June, 1994 when he went to his shop that there had been a break in at the shop and several items valued at Kshs 115,000/- specified in the charge-sheet were missing. On the same morning, PW.2 who was the supervisor of the Appellant spotted him but on seeing him, the Appellant simply took to his heels. An alarm was then raised and members of the public joined in chasing the Appellant. He was arrested and handed over to the police where he was charged. None of the stolen items were recovered.

In his defence, the Appellant testified that he duly reported for duty at the complainant's shop but he was feeling unwell. He therefore talked to another guard from CSS to take after his duties and the said guard agreed. He then left for home at about 10 p.m and took some medicine. He never went back for duty.

The conviction of the Appellant was based on circumstantial evidence. He was the guard on duty at the complainant's shop on the material night. His defence that he went home earlier that night before 10 p.m., was rightly disbelieved by the learned trial Magistrate because when his supervisor was doing the rounds at about 12 min-night, he was found on duty. He made no complaint to the supervisor that he was unwell so that another substitute guard from their company could be brought. By 4 p.m when the police received the theft report at the said shop and went there, the Appellant was nowhere to be seen.

He was supposed to be on duty till 6 a.m but by 5 a.m when the supervisor again went around, he was nowhere to be seen. When the supervisor later in the day spotted him, he took to his heels but with the help of members of the public, he was arrested.

I am satisfied as was the court below that the conduct of the Appellant and the circumstances in which the said theft took place irresistibly points at him to have been party to the theft that had occurred at the complainant's shop. His conviction was quite safe and I find no merit in his appeal against conviction.

The sentence of 2 years imprisonment that was imposed was neither harsh nor excessive. However, the number of strokes that were imposed were quite many. I reduce the number of strokes to 2.

In the result, the appeal against conviction and sentence is dismissed except that the number of strokes is reduced to 2.

Dated and delivered at Mombasa this 30th day of November, 1995

S.O OGUK

JUDGE



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