



Case Number:	Criminal Appeal 448 & 156 of 1982
Date Delivered:	11 Nov 1982
Case Class:	Criminal
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	Mathew Guy Muli
Citation:	Macharia v Republic [1982] eKLR
Advocates:	-
Case Summary:	<p>Macharia v Republic</p> <p>High Court, at Nairobi November 11, 1982</p> <p>Muli J</p> <p>Criminal Appeal No 448 & 156 of 1982</p> <p>Evidence - statement of admission - retraction of - trial within a trial not ordered - admission of statement in evidence - whether proper.</p> <p>Evidence - corroboration by accomplice - evidence of an accomplice - whether corroboration necessary for accomplice evidence - sufficiency of such evidence.</p> <p>The two appellants were convicted and sentenced for shop breaking and dishonest handling of stolen property. At the trial, the only evidence given against the first appellant was that of a person who had received the stolen property from him. The second appellant had retracted a statement alleged to have been made by him under caution but the trial magistrate nevertheless admitted it in evidence without ordering a trial within a trial.</p> <p>Held:</p>

	<p>1. The prosecution witness who had received the stolen property from the first appellant may have been an accomplice and her evidence, therefore, needed corroboration.</p> <p>2. The trial magistrate misdirected himself by not holding a trial within a trial and in admitting a retracted statement without such a trial.</p> <p>3. There had not been sufficient evidence on which to convict, and the guilt of the appellants had not been proved beyond reasonable doubt.</p> <p>Appeals allowed.</p> <p>Cases</p> <p>No case referred to.</p> <p>Statutes</p> <p>Penal Code Sections 306(a); 322(2)</p>
Court Division:	Criminal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeals Allowed
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 NAIROBI

CRIMINAL APPEAL NO 448 & 156 OF 1982

JOHN MWANGI MACHARIA.....APPELLANT

SAMUEL THUKU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

These appeals which were consolidated were allowed, convictions quashed and sentences set aside. I now give reasons for the judgment.

The two appellants, John Mwangi Macharia and Samuel Thuku, were charged jointly with another person who was acquitted by the lower court with three counts of shop-breaking with alternative counts of dishonest handling of stolen goods contrary to Sections 306(a) and 322(2) respectively of the Penal Code (Cap 63). The two appellants were convicted on count 1 of shop-breaking and count 2 of dishonest handling of stolen goods. Samuel Thuku was sentenced to five years' imprisonment and three strokes on each count and John Mwangi Macharia to two years' imprisonment and three strokes, the sentences of imprisonment on both counts being ordered to run concurrently. They appealed to this court against their conviction and sentences. The evidence against John Mwangi was that of PW 3, a vegetable vendor in Nakuru, who gave evidence that this appellant came to her and pledged a weighing machine for a loan of Kshs 600 and that the police later came with this appellant and collected the machine from her house. The machine was not produced in court.

Samuel Thuku was arrested by PW 4 on information received. He was alleged to have given a statement under caution but he retracted or repudiated the statement at his trial. The trial magistrate misdirected himself by not holding a trial within a trial and in admitting the statement without such trial within a trial. I disregard his statement completely so far as it implicates this appellant or the other appellant. The statement, in any case, did not advance the prosecution's case as at all it did not disclose what was stolen and the names of the others mentioned therein do not implicate the other appellant or any other identifiable person.

Having disregarded the caution statements alleged to have been made by the appellants, the only evidence to implicate John Mwangi was that of PW 3, the vegetable dealer. She received the weighing machine from John Mwangi and it was possible that she was an accomplice. Her evidence, therefore, needed corroboration.

The evidence against the third accused was his admission in a caution statement. This was repudiated by the second appellant at his trial. The trial magistrate failed to hold a trial within a trial to determine the admissibility or otherwise of the caution statement. This was a misdirection. There was insufficient evidence to convict these appellants and in the absence of corroboration, the prosecution did not prove the guilt of the appellants beyond a reasonable doubt. For these reasons, the appeals were allowed, convictions quashed and sentences set aside.

Dated and delivered at Nairobi this 11th day of November 1982

M.G MULI

JUDGE



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