**Odendo v Republic**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 22 February 1971

**Case Number:** 965/1970 (22/74)

**Before:** Trevelyan J

**Sourced by:** LawAfrica

*[1] Evidence – Theft – General deficiency – Duty to account daily – Whether charge based on a general*

*deficiency.*

*[2] Evidence – Books of account – Whether sufficient evidence – Whether other evidence led – Evidence*

*Act* (*Cap.* 80), *s.* 37 (*K.*)*.*

**Editor’s Summary**

The appellant was convicted of the theft of money for which he was under a duty to account daily. The actual posting was done by another man. The full facts are set out in the judgment.

On appeal the appellant contended that he had been convicted on the basis of a general deficiency which was insufficient, and that he could not be convicted solely on the books of account.

**Held –**

(i) a charge of the theft of an aggregate amount may be made if there is a duty to account for it on a

certain day;

( ii) the books of account were not the only evidence produced.

Appeal against conviction dismissed.

**Cases referred to Judgment:**

(1) *R. v. Lambert* (1847), 2 Cox C.C. 309.

(2) *R. v. Tomlin*, [1954] 2 Q.B. 274; [1954] 2 All E.R. 272.

[The Evidence Act (Cap. 80) s. 37 is as follows:

“37. Entries in books of account regularly kept in the course of business are

admissible whenever they refer to a matter into which the court has to inquire, but such

statements shall not alone be sufficient evidence to charge any person with liability.”]