

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO 71 OF 2016

(Appeal from original Conviction and Sentence in Murang'a CM Criminal Case No 1253 of 2012 – J J Masiga, RM)

BENARD MBUGUA NJAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, **Benard Mbugua Njau**, was convicted after trial of three counts of *forgery* contrary to **section 345** as read with **section 349**, and three counts of *stealing by servant* contrary to **section 281**, all of the *Penal Code*. He was on 02/09/2016 sentenced to one year imprisonment for each of the forgery counts, and three years imprisonment for each of the stealing counts. All sentences were to run concurrently. He appealed against both conviction and sentence.

2. The record of the trial court does not show that the Appellant, who was undefended, was explained his rights under **section 211(1)** of the *Criminal Procedure Code* after the court found that he had a case to answer. This was a grave error. The error may be curable under **section 382** of the Code where the accused was defended by counsel; but in this case the Appellant was not defended. The record shows that the Appellant gave an unsworn statement in his own defence and had no witness to call. He therefore may have been explained his rights under **section 211(1)** aforesaid. It is however important that the trial court record reflect in terms that the law has been fully complied with, particularly where the accused is undefended. It is not enough to leave it to necessary implication!

3. It is for this reason that this court allowed the Appellant's appeal in its entirety on 03/10/2017 and quashed all the convictions and set aside the unserved sentences. The sentences in counts 1, 3 and 5 had already been served when the appeal was heard.

DATED AND SIGNED AT MURANG'A THIS 19TH DAY APRIL 2018

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 20TH DAY OF APRIL 2018