

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO.85 OF 2016

ERICK MUTHAURA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in criminal case No. 571 of 2016 of the Chief Magistrate's Court a Isiolo by Hon. J. M Irura – Senior Resident Magistrate)

JUDGMENT

ERICK MUTHAURA, the appellant, was convicted on own plea of guilty for the offence of severing with intent to steal contrary to section 32A of the Kenya Communication Act of 2012(sic).

The particulars of the offence were that on 15th December 2014 at Forest area Kasarani route, in Isiolo County jointly with intent to commit mischief, tampered with telecommunication plant namely cable by cutting it, the property of Telkom Kenya Limited.

The appellant was fined Kshs.5 million in default to serve 10 years imprisonment.

The appeal is against sentence only.

The Act under which the appellant was charged was not correctly cited. It is known as **the Kenya Information and Communications Act**. I have perused the record and I am satisfied that the error did not prejudice the appellants in any way . He understood the charge and responded to it and the facts thereof. The error is curable under section 382 of the Criminal Procedure Code.

Section 32A of Kenya Information and Communications Act states:

A person who, with intent to steal, severs any telecommunication apparatus or other works under the control of a licensee, commits an offence and is liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.

The appellant was sentenced to the minimum prescribed penalty. Any other lower sentence would amount to an illegal sentence.

The appeal is therefore dismissed.

DATED at MERU this 28th day of **April, 2017**

KIARIE WAWERU KIARIE

JUDGE