



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MURANG'A
CRIMINAL APPEAL NO. 70 OF 2015

(Appeal from original Conviction and Sentence in Kandara SPM Criminal

Case No.423 of 2015 - P. Nditika, Senior Principal Magistrate)

NICHOLUS MUTEMBEI GITARI.....APPEALANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. On 10/11/2015 I allowed the Appellants' appeal in its entirety by quashing his conviction and setting aside the sentence imposed upon him for reasons to appear in this judgement. I directed that he be released forthwith unless otherwise lawfully held. I now give my reasons.

2. The Appellant, **Nicholas Mutembei Gatari**, was convicted upon his own plea of ***being in possession suspected stolen property*** contrary to **section 323** of the **Penal Code**. He was sentenced to serve 2½ years imprisonment. He appealed against both conviction and sentence.

3. The main ground of appeal is that the plea was not unequivocal because –

i. The facts given by the prosecution did not support the offence charged in that those facts included what amounted to a reasonable explanation by the Appellant as to how he had come into possession of the suspected stolen goods.

ii. In any event, the plea of guilty as recorded by the trial court was not signed by the learned trial magistrate.

4. I have looked at the record of the trial court. Part of the facts given by the prosecution were the following –

“.....The officer (called) the accused (who) confirmed that the dried coffee (that he had)... belonged to him. He had bought it for KShs 5,000/00. The accused was arrested as he did not have any license to sell coffee which was dry.”

5. The Appellant had asserted his right to ownership of the suspected stolen goods. It is also to be noted that he was not charged with selling dry coffee without a license; he was charged with possession of suspected stolen property. His plea was therefore equivocal, and the trial could should have entered a

plea of not guilty to enable him to be tried. Also, as has already been pointed out, the conviction was not signed by the trial court.

6. Learned Prosecution Counsel properly did not support the conviction, and did not wish to have a retrial of the Appellant.

7. It was for the reasons stated above that the appeal was allowed in its entirety.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF FEBRUARY 2016

H.P.G. WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 26TH DAY OF FEBRUARY 2016