



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 96 OF 2015**  
**EDWARD LIMIRI M'ARANJU.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

*(From the original conviction and sentence in criminal case No.2018 of 2015 of the  
Chief Magistrate's Court at Maua by Hon. Samuel Soita – Senior Principal Magistrate)*

**JUDGMENT**

The appellant, **EDWARD LIMIRI M'ARANJU**, was convicted of an offence of stealing contrary to section 268(1) as read with section 275 of the Penal Code.

The particulars of the offence were that on 27<sup>th</sup> June 2015 at Kirindara village in Igembe South District of Meru County, jointly with others not before court stole miraa valued at Kshs. 7000/= the property of Peter Gitonga.

The appellant was sentenced to serve 2 (two) years imprisonment. He now appeals against both conviction and sentence.

The appellant was represented by Mr. J.O Ondieki, learned counsel. He raised three grounds of appeal as follows:

1. That the appellant did not understand the consequences of changing plea.
2. That the appellant was not explained the effect of changing plea.
3. That the appellant was misled.

The state opposed the appeal through Mr. Odhiambo, the learned counsel who contended that the appellant was estopped from raising issues on conviction for he had pleaded guilty to the offence.

When the appellant was taken to court on 29<sup>th</sup> June 2015, he pleaded not guilty to the charge. The matter was fixed for hearing on 23<sup>rd</sup> September 2015. However, when the case came up for mention on 30<sup>th</sup> July 2015, the court indicated that it was to be mentioned next on 3<sup>rd</sup> August 2015 for change of plea.

The record is silent as to who made the application.

On 3<sup>rd</sup> August 2015 the record indicates that the plea was read over and explained to the accused in Kimeru. Since there were two accused persons the record of appeal is not clear which of the two changed his plea. However the original record indicates that it was the first accused who changed his plea.

The appellant pleaded guilty and when the facts were read to him, he confirmed that they were correct.

The only issue I could have raised was the fact that the record was silent as to who made the application for the change of plea. However, since the charge was read afresh and explained to the appellant I make a finding that he must have been the one who had made the application.

The record does not have anything to show that he was misled by anybody. The learned trial magistrate had no obligation to inform him that he was going to send him to prison. This must have been the appellant's expectation. By virtue of the provisions of section 348 of the Criminal Procedure code he cannot contest his conviction. It states:

***No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.***

The value of the stolen miraa was given as Kshs. 7,000/= In the circumstances I am persuaded that the sentence was harsh. I therefore set aside the learned trial magistrate sentence and substitute it with a fine of Kshs. 20,000/= in default to serve six months imprisonment. To that extent his appeal succeed.

**DATED at Meru 19<sup>th</sup> day of December 2016**

**KIARIE WAWERU KIARIE**

**JUDGE**