



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 146 of 2012

(From Original Conviction and Sentence in Criminal Case No. 1539 of 2012 of the Chief Magistrate's Court at Mombasa – R. Odenyo (PM))

ROBERT ANYOLE EMMANUEL APPELLANT

- Versus -

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was convicted and sentenced to eight years imprisonment for the offence of stealing goods on transit contrary to Section 279(c) of the Penal Code.

The particulars are that on the night of 8th and 9th day of May 2012 along the Mombasa – Nairobi Highway within the Republic of Kenya, jointly with others not before the Court stole one motor vehicle Registration No. KAN 553F make Scania with trailer number ZC 0583 loaded with 1 X 40ft container Registration Number TGHU 922516/0 containing 989 pieces of Linglong tyres valued at US dollars 920788 the property of Mandela Auto Spares Ltd while the said goods were on transit from Mombasa to Malaba.

In the present case the charge was read to the Appellant and he is shown to have stated that **“It is true.”**

The facts were read to him and he is shown to have stated **“The facts are correct.”**

A perusal of the facts show that the only link to the Appellant is to be found at page 3 line 4-

“Police Officers got into contact with Safaricom Limited and they were able to tap communication between the driver of the lorry and the Accused. Accused was subsequently arrested and charged with this offence.”

The communication between the driver of the lorry and the Accused was not explained and or expounded so as to link the Accused with the offence of theft. The facts as presented did not disclose any offence.

It is also noted that after the Appellant was called upon to mitigate, the prosecution was allowed to cross-examine him. This was after he declined to offer any mitigation. This was unprocedural and uncalled for.

I am not satisfied that the plea was unequivocal. I accordingly declare his conviction a nullity and set aside the sentence imposed upon him and order for a retrial before a Court of competent jurisdiction.

Judgement read and delivered in open Court this 26th day of April, 2013.

**M. MUYA
JUDGE**

In the presence of:-

Mr. Oyoro for State

Counsel for the Accused - absent

Court clerk – Mr. Musundi