

knowing it to be stolen or unlawfully obtained. When asked to the facts he responded “*all the facts are true*” whereupon he was convicted. It is clear that the trial magistrate was careful in taking plea and complied with the provisions of section 207 of the Criminal Procedure Code and the direction in **Adan v Republic (above)**. The case cannot be compared with that in **Wanjiru v Republic** where all that was recorded as the Appellant’s response was “*It is true*” and there was no outline by the prosecution of the facts that constituted the offence. The plea in the instant case was unequivocal. The consequence is that the appeal against conviction is dismissed.

Regarding sentence, the trial court appears to have been influenced by the prosecutor’s statement that the offence was serious and deserved deterrent treatment because the offence was on the increase in the area. This is what made the court to award 3 years on each limb. It was not for the prosecution to tell the court of his view as to the seriousness of the offence or to make any other comment with a view to influencing the sentence. (**Shiani v Republic [1972] EA 557**). All that he was required to do was to indicate whether or not the Appellant had a past record. It was wrong and prejudicial for the prosecution to make the remarks that it did.

Further, the record does not reflect that the court considered that the Appellant was a first offender who had pleaded guilty to the charge. It was pointed out in **Nilsson v Republic [1970] EA 599** that the fact that the Appellant was a first offender who had pleaded guilty should be considered in sentencing. The court should also have considered that the amount stolen was only Ksh.800/= and that it had been recovered. I find that the court, in reaching the sentence, considered immaterial factors and also failed to consider material factors. It is for these reasons that I set aside the sentence of 3 years on each limb. I order the Appellant to await a Community Service Orders Report which should be prepared in 7 days. The case shall be mentioned on 28/3/2012 for sentence.

Dated and Delivered at Bungoma this 21st day of March, 2012.

A. O. MUCHELULE

JUDGE