



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 22 OF 2010

COSMAS KIPKIRONG BETT APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being Appeal against Sentence from Principal Magistrate's Court at Kapsabet delivered on 5th February, 2010 by Hon. G.M. Mutiso – Resident Magistrate)

J U D G M E N T

Basically, the appeal was on sentence. The appellant was sentenced to serve four years imprisonment on a charge which carries a maximum sentence of fourteen years. Therefore, the sentence was neither unlawful nor excessive for this court to interfere with it.

However, it is notable that the learned trial magistrate failed to comply with the provisions of section 207 C.P.C. and the guidelines provided in the case of **Aden Vs. Republic (1973)EA 445** with regard to plea – taking. Although the charge was read in a language understood by the appellant in that there was necessary translation from English to Kiswahili, the facts of the case were not properly and adequately stated upon the appellants plea of guilt.

It was in-appropriate for the learned trial magistrate to merely indicate “Facts as per the charge sheet.”

For that reason alone, this appeal is allowed to the extent that the conviction is quashed and the sentence set aside. However, the appellant will be re-tried before another court of competent jurisdiction. Preferably the Chief Magistrate’s Court here in Eldoret.

Ordered accordingly.

J.R. KARANJA
JUDGE
19/5/2011