



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO. 151 OF 2010**

**MUNYALO MUSYOKA ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENT**

**R U L I N G**

The Appellant, **Munyalo Musyoka**, was charged with **stealing** contrary to **section 275** of the **Penal Code, Cap 63**. It was alleged that on the 28<sup>th</sup> May 2010 at about 8.00 a.m. at Syongila village, Kaveta sub-Location, Mutune location in Kitui District of Eastern Province he stole 4 pole-posts valued at KShs. 4,800/00, the property of Telcom Kenya.

In the alternative he was charged with **handling** the said posts contrary to **section 322 of the Penal Code**. It was alleged that on the 28<sup>th</sup> May 2010 at about 10.00 a.m. at the same place, otherwise than in the course of stealing, he dishonestly detained the four posts knowing or having reason to believe them to have been stolen.

The Appellant pleaded not guilty to the main count. He pleaded guilty to the alternative charge and was convicted. He was sentenced to pay a fine of **KSh. 100,000/00** and in default to serve one year imprisonment. The court was informed that he did not pay the fine and is currently serving the default sentence.

The Appellant has appealed against both conviction and sentence. He has also applied to be released on bail pending disposal of his appeal.

The point taken by the Appellant is that his plea was equivocal in that in his mitigation he appeared to explain the circumstances in which he handled the stolen posts, which circumstances, in view of his learned counsel, showed that he did not dishonestly handle the posts.

I must point out that mitigation is not part of the process of taking the plea. Mitigation is relevant only to sentencing. The process of taking the plea was completed when the plea of guilty was entered. The Appellant, in response to the charge, pleaded, **“It is true”**. The prosecution then gave facts of the case. These facts were that the Appellant was found in his home with the four posts. He had cut three of them into shorter fencing posts which he had already used to fence part of his compound. The fourth post was as yet unused.

The Appellant did not lay any claim to the four posts. Nor did he claim that he did not know that they belonged to the complainant. In those circumstances, the act of cutting three of the posts into shorter pieces and then using them as fencing posts must indicate an intention to conceal their source. In any case, how could he have handled the posts in such a manner, which posts did not belong to him, other than dishonestly? It appears to me, *prima facie*, that the plea was unequivocal.

An appellant who applies to be released on bail pending determination of his appeal must demonstrate that his appeal has overwhelming chances of success. The court also has jurisdiction to grant bail in special circumstances. The Appellant has not demonstrated to my satisfaction that his appeal has overwhelming chances of success, or that there are any special circumstances that would entitle him to bail pending appeal. His application is hereby dismissed. It is so ordered.

**DATED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF JULY 2010**

**H. P. G. WAWERU**  
**JUDGE**

**DELIVERED THIS 30<sup>TH</sup> DAY OF JULY 2010**