

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 166 of 2008

JOSEPH MBUGUA NJERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

JOSEPH MBUGUA NJERI, the appellant was charged with the offence of preparation to commit a felony contrary to **Section 308(1) (a)** of the **Penal Code**. The particulars of the offence against him were that on 23rd June 2008 at about 2.30 a.m. at Subukia View Point along Nakuru Nyahururu Road in Nakuru District of Rift Valley Province jointly with others not before court he was found not being at his place of abode and had with him an article for use in the course of car jacking namely an iron bar. Upon his own plea of guilty to that charge he was convicted and sentenced to seven years imprisonment. He has appealed against that sentence.

Having perused the record I entirely agree with Mr. Njogu for the state that the facts as stated by the prosecutor did not disclose the offence of preparation to commit a felony. There is no nexus between the stone blockage found by the police on the road and the appellant. In the circumstances I allow this appeal, quash the conviction and set aside the sentence. The appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 8th day of December, 2009.

D. K. MARAGA

JUDGE.