

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 314 of 2009

OBARA THADAYO NDALOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

OBARA THADAYO NDALO, the Appellant, was charged with stealing by servant contrary to **Section 281** of the **Penal Code**. The particulars of the charge against him were that on 2nd March 2009 at Egerton University Njoro in Nakuru District of Rift Valley Province being a servant of Egerton University he stole one roll of 2.5 mm single cable valued at Kshs.3,400/- which came to his possession by virtue of his employment. He denied the charge and was tried before the Senior Resident Magistrate at Nakuru.

The record of appeal has no judgment. After the Appellant was put on his defence on 7th October 2009 and he testified on oath, he closed his case and judgment was reserved for 4th November 2009. On that date the record shows that judgment was read in court and the Appellant was apparently convicted but as I have said there is no copy of the judgment on the file. He was thereafter sentenced to one year's imprisonment. This appeal is against that apparent conviction and sentence.

At the hearing of the appeal, Mr. Njogu the learned state counsel conceded, with the concurrence of Mr. Ogolla for the Appellant, and, I also agree with them, that in the absence of the judgment the proceedings against the Appellant should be declared a mistrial and I do so declare them. Consequently I quash the Appellant's conviction and set aside the sentence of one year's imprisonment. The Appellant shall be retried before another court. Appellant to be taken before the Chief Magistrate on 3/12/ 2009 for plea.

DATED and delivered this 2nd day of December, 2009.

D. K. MARAGA

JUDGE.