

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 30 of 2006

NAHASHON NJIRU IRERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appeal was against conviction and sentence imposed by Trial Magistrate in ***Criminal Case No.187 of 2005 at Siakago Principal Magistrate's Court.*** The appellant was charged with theft contrary to section 275 Penal Code. When the hearing of the appeal commenced, the State Counsel informed the court that he was conceding the appeal on the ground that Section 200 CPC was not complied with. The record shows that on 29/11/2005 Mr. Okato presided in the court on 6/12/2005 the presiding Magistrate was F.M. Omenta. There is no mention of provision of Section 200 CPC or the rights of an accused under that Section Mr. Omwega also pointed out that the sentence is almost served and for that reason he was not seeking a Retrial Appellate said nothing.

Upon consideration of the submissions by State Counsel and perusing the record, I agree with State Counsel failure to comply with any provisions of law in Criminal prosecution is fatal. I therefore allow the appeal and order that the Appellant be set at liberty forthwith, unless otherwise lawfully held.

Dated this 9th June, 2008.

J. N. KHAMINWA

JUDGE

9/6/2008

Khaminwa – Judge

Njue- Clerk

Mr. Omwega for State – present

Appellant – present in person.

Read in open court.

J. N. KHAMINWA

JUDGE