



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Criminal Appeal 330 of 2002**

**REPUBLIC.....APPELLANT**

**VERSUS**

**JOSEPH WANJOHI NDERITU.....RESPONDENT**

***(Being Appeal against the sentence and conviction by M. R. Gitonga, Senior Resident Magistrate, in the Chief Magistrate's Criminal Case No. 3862 of 2001 at Nyeri)***

**JUDGMENT**

This is an appeal against the decision of M. R. Gitonga dated 7<sup>th</sup> August 2002, then Senior Resident Magistrate. It was delivered on 8<sup>th</sup> August 2002 acquitting the Respondent of the charge of stealing by director contrary to *Section 282* of the Penal Code. Particulars alleged that on divers dates between 16<sup>th</sup> July and 2<sup>nd</sup> October 2001 at Nyeri Township within Central Province, the Respondent, being a director of North Tetu Company Limited stole Kshs.159,000/= from the said North Tetu Farmers Company Limited.

The Republic was aggrieved by the acquittal and therefore appealed and the appeal has been argued by State Counsel Mrs Ngalyuka. Mr. Gachiri Kariuki, Advocate, represented the Respondent.

From what has been brought to my attention during the hearing of the appeal, there are two things I should point out.

Firstly, the Respondent was charged in his capacity as “a director of North Tetu Farmers Company Limited yet the evidence adduced by the prosecution showed that the Respondent was a “Chairman” and not a “Director”. I am not therefore convinced that the evidence which was adduced against the Respondent as “a Chairman” was good evidence against him as “a Director.” In other words, did that evidence support the charge? That issue was ignored during the hearing of this appeal. But I bear it in my mind when looking at the evidence on record.

From my own evaluation of that evidence, it is my finding that the prosecution did not succeed in proving the case against the Respondent beyond reasonable doubt and therefore there was no justification for the conviction the Appellant is looking for in this appeal against the Respondent.

I should add that under *Section 348 A* of the Criminal Procedure Code, the Attorney General is allowed to appeal against an acquittal on a matter of law only. But strictly looking at the grounds of appeal in this appeal, they are matters of facts and hardly matters of law. It follows the Attorney General ought not to have filed this appeal.

It follows therefore that this appeal has no merits and the same is hereby dismissed.

***Dated this 19<sup>th</sup> day of February 2007.***

**J. M. KHAMONI**

**JUDGE**