



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Criminal Appeal 294 of 2004**

**MURAGURI KIBUGU.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**[Being an appeal filed against both conviction and sentence of G.P. Ngare, Resident Magistrate in Criminal Case No. 1205 of 2003 at Murang'a.]**

**JUDGMENT**

The appellant at the lower court was charged with stealing contrary to Section 275 of The Penal Code. In the alternative he was charged with handling stolen goods. The appellant was further charged with trespass contrary to section 5 (1) and (a) of cap 294. The evidence in the lower court was as follows:-

Pw1 said that he resides in Nairobi but that he is the owner of property **Loc15/Geitwa/210**. He had purchased that land in 1995. He was telephoned by his father on 19<sup>th</sup> July 2003 and was told that some people were cutting down trees in his property. That land he had purchased it from the appellant. He exhibited the agreement for sale during the trial. He also exhibited evidence of payment made to the appellant for that purchase. He concluded by saying that he did not owe the appellant any money in respect of that purchase. On going to his land he found one tree had been cut down. Together with police officers they proceeded to the home of the appellant. They did not find the appellant at home but found his wife. In the compound of home they found 42 pieces of cut timber. They collected the timber which they stored else where. Pw2 found people on the complainant's property cutting down trees. She stopped them from cutting down any more trees. Pw3 gave evidence of how the appellant had taken him to the complainant property and had sold to him 3 trees. He said that he traded in timber in Nairobi. He initially paid the appellant Ksh. 300/=. Pw4 is the father of the complainant he was told by pw2 that there were people cutting down trees on the complainant land. He went and stopped them from cutting trees. He is the one that called the complainant to inform him about the people that were cutting down his trees. Pw5 is a policeman confirmed that he accompanied the complainant to the appellant house and collected the timber. In his defence the appellant denied the charge and stated that they had sold the land to the complainant but not the trees. In the learned magistrate judgment of 5<sup>th</sup> of March 2004 the learned magistrate found the appellant guilty of all charges in the respect of count 1 the sentence was a fine of Ksh. 2500/= and in default 30 days imprisonment. In respect of count 2 the sentence was similar for count 3 the sentence was a fine of 1000/= in default 30 days imprisonment. My finding in this appeal is that the tree which was cut down on the complainant property as stated in count No. 1 is the same tree that was cut into pieces of wood as stated in count 2. The complainant in his evidence stated that only one tree had been cut down. Indeed when one look at count 1 it is clear that count 2 is an alternative count. Accordingly the appellant could not be found guilty on both counts. That being the finding of the court, the court will have to decide which of the two counts be supported by the evidence. I am of the view that the count which is supported by the evidence is the one of stealing. Accordingly the court does hereby set aside the conviction on count No. 2. The appellant shall be refunded if he did pay the fine of Ksh. 2500/=. There is also no sufficient evidence to support the conviction on count No. 3. Accordingly the court does hereby set aside that conviction and if the appellant did pay the fine in respect of that count the court orders that he be refunded Ksh. 1000/=. The count 2 is sufficiently proven beyond a reasonable doubt and

appeal in respect of that count is dismissed.

**Dated and delivered at Nyeri this 28<sup>th</sup> day of September, 2007.**

**MARY KASANGO**

**JUDGE**