

(From original conviction and sentence in Criminal Case No. 1250 of 2007 of the Chief Magistrate's Court at Mombasa:

M. OBIERO – R.M.)]

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL 105 OF 2007

DESTA MUTEGEKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

The Appellant was charged with the offence of stealing contrary to section 275 of the Penal Code. After trial before the Resident Magistrate at Mombasa he was, pursuant to section 179 of the Criminal Procedure Code, convicted of what the learned trial magistrate called a lesser offence of obtaining by false pretences and sentenced to two years imprisonment. He has appealed against both that conviction and sentence.

In presenting his appeal the Appellant argued that obtaining by false pretences is not a minor offence to stealing as both carry almost the same sentence. Mr. Monda, learned State Counsel, conceded that argument and added, in my view rightly so, that for Section 179 to apply the minor offence must be shown to have arisen from the same transaction as the offence charged. That was not the case here.

In the circumstances I allow this appeal quash the conviction and set aside the sentence. The Appellant shall be released forthwith unless otherwise lawfully held.

DATED and delivered this 18th day of September 2007.

D.K. MARAGA

JUDGE