

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 322 & 323 of 2003

BONIFACE MURIITHI NYAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original conviction and sentence in the Resident Magistrate's Court at

Wanguru in Criminal Case Number 1246 of 2003 by P. T. Nditika – R.M. dated 12th August 2003)

CRIMINAL APPEAL CASE NUMBER 323 OF 2003

JULIUS NYAGA NJERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original conviction and sentence in the Resident Magistrate's Court at

Wanguru in Criminal Case Number 1246 of 2003 by P. T. Nditika – R.M. dated 12th August 2003)

J U D G M E N T

CONSOLIDATED

Boniface Muriithi Nyaga (*hereinafter referred to as the 1st Appellant*) and Julius Nyaga Njeru (*hereinafter referred to as the 2nd Appellant*) were each convicted on his own plea by the Resident Magistrate Wanguru for the offence of Burglary and Stealing Contrary to Section 304 (2) and 279 (b) of the Penal Code. They were each sentenced to serve 3 years imprisonment together with 1 stroke of the cane. Each Appellant appealed against his conviction and sentence. On the 6th April 2006 the appeals were consolidated and heard before me. I thereafter allowed both appeals quashed the convictions and set aside the sentences. I now give my reasons for doing so.

Having examined the record of the lower court, it is evident that although the Accused persons both pleaded guilty to the charge and admitted the facts put to them, the trial magistrate did not enter a plea of guilty nor did He enter a conviction against any of the Appellants. The Appellants sentence had therefore no base to stand on. Secondly although the offence to which the Appellants pleaded guilty had two limbs, the trial magistrate only imposed one sentence without indicating what it was for. The proceedings and sentence were therefore highly irregular. Learned Principal State Counsel has conceded the appeal. The Appellants had also almost completed the sentence imposed. In the circumstances, it was only fair that the appeals be allowed convictions quashed and sentence set aside.

Dated, signed and delivered this 24th day of May 2006.

H. M. OKWENGU

JUDGE