

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Appeal 19 of 2005

(From Original Conviction(s) and Sentence in Criminal case No. 264 of 2005 of the Senior Resident Magistrate's Court at Makindu –J.M.Munguti SRM on 22/3/2005).

**TUMBEINE NYARU.....
.....APPELLANT**

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Appellant was charged with stealing stock contrary to section 278 of the Penal Code. In the alternative he was charged with handling stolen property contrary to section 322 (2) of the Penal Code. On being asked to plead in a language which was either English or Swahili as both are indicated to have been used, he simply said "True". No plea of guilty was entered but facts were stated. The facts would tend to show that the plea – "true" might apply to either of the alternative offences of stealing stock or handling the same. Accused then replied " Facts are correct".

Again it is not clear whether it is stealing or handling that the facts are true to. Thereafter is when the trial courts tries to now enter a plea of guilty in the same sentence which enters the convictions. Once more the court does not clarify the charge it was dealing with.

The defence objects to this plea. It submits that the plea is not unequivocal. Mr. O'mirera for the Attorney General agrees with the defence submission.

I have considered this ground of appeal. I agree with both. The plea is not unequivocal. It is not clear either which charge the court dealt with. The conviction cannot therefore stand. It is hereby quashed and the sentence set aside. The appellant who is on bail is acquitted and discharged since no retrial is sought. It is so ordered.

D.A. Onyancha

JUDGE

27/6/06