

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 207 of 2001

GEORGE KARIUKI GITAU.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being Appeal Against Conviction and sentence of P. Mwangulu, District Magistrate I, In the District Magistrate's Criminal Case no. 334 of 2001, Kigumo)

JUDGMENT

The Appellant was charged with the offence which alleged illegal possession of farm produce contrary to *Section 8(1)* of Stock and Produce Act Chapter 355 Laws of Kenya and particulars were that on the 19th April 2001 at about 4.00 p.m. at Nguthuru Village in Maragua District Central Province, the Appellant was found in possession of 332 fresh pineapples suspected to be stolen or unlawfully obtained.

The Appellant who does not deny to have been in possession of the pineapples was, according to the evidence of P.W.1, Simon Chomba Chege, arrested by Traffic Police at a road block at a place called Makenzie when the police stopped the matatu Nissan P.W.1 was driving with five passengers and checked luggages. Upon order by the Traffic Police, P.W.1 drove his motor vehicle to Kabati Police Station where the police who had arrested the Appellant handed him over to P.W.2 Police Constable Julius Riungu who was on duty. P.W.1 had picked up the Appellant when he found the Appellant and his luggage waiting for a public transport motor vehicle to carry him. The passenger motor vehicle P.W.1 had was going to Thika the area where Delmonte Farm of pineapples is.

P.W.1 and P.W.2 were the only prosecution witnesses. The two Police Officers, Constable Githinji and Costable Mohammed from Kandara Traffic Base who had arrested the Appellant did not give evidence and there was no witness from Delmonte Farm, a clear manifestation of the casual manner in which the Prosecution handle a number of criminal cases yet each case concerns human liberty. When the Prosecution's case closed therefore, the Appellant rightly elected to say nothing in his defence. But the trial magistrate who should not, in the first place, have put the Appellant on his defence, went ahead to convict the Appellant and sentenced the Appellant to three years imprisonment.

Clearly that was wrong as there was no evidence on record to sustain the conviction and sentence. All that P.W.1 could say about the suspected stealing was that he heard the pineapples were stolen. He did not even reveal name of the person from whom he had got that information. All that P.W.2 could say on that issue was that P.C. Githinji and P.C. Mohammed alleged the Appellant had stolen pineapples from Delmonte Farm.

What P.W.1 and P.W.2 said could not sustain the Appellant's conviction. That was hearsay and the Appellant did not even have a case to answer and all that the learned magistrate did putting the Appellant on defence and thereafter convicting the Appellant was wrong as the two arresting officers should have been in court and convinced the court why they suspected the pineapples to have been stolen before the Appellant could have been called upon to defend himself. Otherwise it is not just a matter of throwing an accused person into a court room and asking him to defend himself before the allegations against him are laid supported and proved in the same court by those who arrested him suspecting him to be a thief.

Accordingly, this appeal is allowed. The appellant's conviction hereby quashed and the sentence imposed upon him set aside. The Appellant be released forthwith unless lawfully detained in some other cause.

Dated this 28th day of February 2005.

J. M. KHAMONI

JUDGE