



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CRIMINAL CASE NO.313 OF 2001**

*(An appeal from the Judgment of C. D. Nyamweya Senior Resident Magistrate, Nyeri
delivered on 22nd October, 2001 in Criminal Case No.4227 of 2000)*

SAMUEL MUTURI KANYOTU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CRIMINAL CASE NO.315 OF 2001

ISAAC GATIMU KONJE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CRIMINAL CASE NO.316 OF 2002

JOSHUA MAINA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CRIMINAL CASE NO.317 OF 2001

**(An appeal from the Judgment of C. D. Nyamweya Senior Resident Magistrate, Nyeri
delivered on 22nd October, 2001 in Criminal Case No.4227 of 2000)**

GEOFFREY WAITHAKA GICHAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

(CONSOLIDATED)

Samuel Muturi Kanyotu (Appellant in Hc.Cr. Appeal No.313 of 2001), Isaac Gatimu Konje (Appellant in Hc.Cr. Appeal No.315 of 2001) Joshua Maina Mwangi (Appellant in Hc.Cr. Appeal No.316 of 2001) and Geoffrey Waithaka Gichaga (Appellant in Hc.Cr. Appeal No.317 of 2001) were all jointly tried and convicted by the Senior Resident Magistrate Nyeri of two counts. The first being transporting coffee without a movement permit contrary to rule 3(1) as read with rule 6 of the Coffee Movement Rules Cap 33 Laws of Kenya, and the second count being one of Transporting Coffee After Hours Contrary to rule 5 as read with rule 6 of the Coffee Movement Rules, Cap 333 Laws of Kenya. They were each sentenced to pay a fine of Kshs.15,000/- in default to serve 6 months imprisonment on each count. Being aggrieved, they have each separately appealed against conviction and sentences which appeals have been consolidated for purposes of hearing.

Mr Macharia who appeared for all the appellants has argued that the trial Magistrate erred in convicting the appellants as the coffee they were alleged to be transporting was “raw coffee berries” which is not included in the definition of “coffee” as defined in the Coffee Movement Control Rules, secondly the appellants did not require a movement permit as they were transporting their own coffee collected from farmers for which time was not of essence. It was further submitted that the sentence was illegal and unlawful as it was contrary to rule 6 of the Coffee Movement Rules. The State Counsel has indicated that she is conceding the appeal.

It is apparent that the coffee which was allegedly being transported was raw coffee. This was clear from page 3 of the Record of appeal wherein the Prosecutor states that: “The coffee is raw coffee. The coffee may go bad if kept for a long period before being processed.” Under rule 2 of the Coffee (Movement Control) Rules “Coffee” means “clean coffee, parchment coffee and buni, but not the coffee fruit or cherry which has not been dried, roasted berries or ground berries.” It is evident therefore that what the appellants were alleged to be having was excluded from the rules and did not therefore require a movement permit. The trial Magistrate therefore erred in convicting the appellants.

As regards the sentence the same was clearly illegal as it was way above the maximum penalty of Kshs.2,000/- and the default term of 2 months provided under rule 6 of the Coffee (Movement Control) Rules.

I do therefore allow all the respective appeals, quash the conviction of each appellant and set aside the sentences imposed. The fines if paid shall be refunded to each appellant.

Dated, signed and delivered this 26th day of May 2005.

H. M. OKWENGU

JUDGE