

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 81 of 2005

JAMES HIUHU KABIA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The appellant was charged with stealing by servant contrary to section 281 of the Penal Code. The particulars of the offence were that on the 1st day of March, 2002 at Ol Kalou Township in Nyandarua District within Central Province, being a servant to Elijah Thuku Karanja as Salesman he stole from his employer Kshs.213,120/-. The appellant was tried, convicted and sentenced to pay a fine of Kshs.50,000/= in default, one year imprisonment. He was aggrieved by the said conviction and sentence and he appealed against the same.

When the appeal came up for hearing and before the appellant's counsel addressed the court, Mr. Gumo, Assistant Deputy Public Prosecutor told the court that he was not opposing the appeal because the appellant was partly prosecuted by an incompetent prosecutor contrary to the provisions of section 85(2) of the Criminal Procedure Code and therefore the proceedings were a nullity. He also said that he would not apply for a retrial because the appellant had served a substantial portion of his prison sentence, having been unable to raise the fine of Kshs.50,000/=.

I have perused the record of appeal and I agree with Mr. Gumo entirely. I therefore quash the conviction and set aside the sentence that had been pronounced by the trial court and order that the appellant be set at liberty unless otherwise lawfully held.

DATED, SIGNED & DELIVERED at Nakuru this 28th day of July, 2005.

D. MUSINGA

JUDGE