

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 116 of 2003

ANN NYAMBURA MBUTHIA APPELLANT
VERSUS
REPUBLIC RESPONDENT

*(Appeal from original Judgment and Conviction in Chief Magistrate's Court at Nyeri
in Criminal Case No. 1201 of 2002 dated 9th October 2002 by Mr. C. D. Nyamweya –
S.R.M. – Nyeri)*

J U D G M E N T

Ann Nyambura Mbuthia (hereinafter referred to as the appellant) was tried together with Jane Wambui Joseph (hereinafter referred to as the Co-Accused) by the Senior Resident Magistrate Nyeri on two counts of stealing contrary to section 275 of the Penal Code and two counts of Handling stolen goods contrary to section 322 (2) of the Penal Code. The appellant and his Co-Accused were both convicted of the two offences of stealing contrary to section 275 of the Penal Code.

Being dissatisfied the appellant has appealed against her conviction and sentence. Learned State Counsel Ms Ngalyuka has indicated that she is conceding this appeal. I concur with her. The conviction cannot stand.

First the charge sheet was defective as the appellant and her Co-Accused were charged with a total of 4 counts being two counts of stealing contrary to section 275 of Penal Code and two counts of Handling stolen goods contrary to section 322 (2) of the Penal Code. This was wrong as the charges of Handling stolen goods ought to have been alternative charges to those of theft.

Secondly the evidence adduced against the appellant was only the statement of her Co-Accused which statement was repudiated. The magistrate purported to find corroboration of the statement in the recovery of the shoe subject of one of the theft charges. However the shoe was recovered from the appellant's Co-Accused and not from the appellant. Moreover even if it was to be accepted that there was corroboration, the repudiated statement could not be the basis of the conviction but could only lend support to other evidence. There was however no other evidence against the appellant to which the repudiated statement could lend support. The charges against the appellant were therefore not proved.

Accordingly I do allow this appeal, quash the conviction of the appellant and set aside the sentence imposed upon her.

Dated signed and delivered this 29th day of November 2005

H. M. OKWENGU

JUDGE

