

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 289 OF 2002
(From Original Conviction and Sentence in Criminal Case No.286 of 2002
of the Chief Magistrate's Court at Mombasa – R.Ndubi, Esq., - R.M.)

BERNARD MWANGI MURAGURI.....APPELLANT
=V E R S U S
REPUBLIC.....RESPONDENT

J U D G M E N T

There is a mistrial here. The Police Constable Osuna unauthorized person contrary to Section 85 Criminal Procedure Code participated in the prosecution of this case. Therefore the State Counsel has correctly so conceded the appeal. However, she asks for retrial.

The sentence was pronounced on 3/6/2002. The offence was Stealing from a Public Service Company of items valued at Kshs.118,200/-. The Appellant was not a first offender when he was sentenced.

I have considered the length of sentence and that the Appellant was charged with vandalizing assets of a public utility company. It was not his first time to commit offence of this nature.

I find it to be a proper case for retrial. I therefore allow the present appeal and order a retrial. The Appellant shall remain in custody to appeal on 1/4/04 before Chief Magistrate Mombasa for further directions.

Dated at Mombasa this 30th day of March, 2004.

JOYCE KHAMINWA
J U D G E