

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 42 of 2003

REPUBLIC PROSECUTOR

- VERSUS -

MARGARET WANJIKU HENRY ACCUSED

J U D G M E N T

In this case the appellant was charged with several charges of offences but was convicted with alternative charge of Handling Stolen Goods Contrary to Section 322 (2) of the Penal Code.

After mitigation she was sentenced to 3 years imprisonment. This appeal is not opposed by State Counsel who gave her reasons in her submissions that the charge mentioned 700 tones but evidence was that the sugar discovered was only 696 tones and the court was not shown the goods. There was discrepancy in what sugar was stolen and this created doubt as to which sugar was stolen.

On the part of appellants advocate Mr. Magolo, said as there was discrepancy in the amount of sugar stolen the charge sheet should have been amended to reflect the evidence given, failure to do this rendered the charge defective. Further that failure to exhibit sugar stolen was material defect in the prosecution case. Failure to charge driver of the lorry which transported the sugar is also a defect. The driver should have been a first suspect and his evidence would be treated as that of accomplice. PW3 showed his ID which number was different and name different. It could be of a non existent person. The Trial Magistrate misdirected herself in considering evidence separately for each count. The Trial Magistrate simply shifted the burden of proof to the appellant, there were no marks to distinguish stolen sugar from that supplied.

After consideration of the submission of both State Counsel and the defendant Counsel I am satisfied that the conviction and sentence is not supported by evidence and as the State concedes appeal, I allow the appeal quash conviction and set aside sentence. The appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 25th day of October, 2004.

J. KHAMINWA

JUDGE