

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 364 OF 2004**

**(From original conviction(s) and Sentence(s) in Criminal case No. 11010 of 2004 of the
Chief Magistrate's Court at Makadara (Mr. Nyakundi -C.M.)**

**HUSSEIN KARANJA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

The Appellant, HUSSEIN KARANJA pleaded guilty to one count of STEALING FROM THE PERSON contrary to Section 279 (a) of the Penal Code. He was upon conviction sentenced to 16 months imprisonment. He has lodged this Appeal against the sentence.

MR. ONDARI learned counsel for the state conceded to the Appeal on grounds that the stolen items having been recovered the sentence imposed was excessive. I have perused the record of the trial court. After the Appellant admitted the charge, the Prosecution led the facts of the charge as follows: -

“On 14/5/2004 at about 7.00 p.m. the Complainant was from his place of work accompanied by the sister. When he reached Jogoo Road, he met with a young man who snatched the hand bag from the Complainant and disappeared. The Police Officers who were on patrol came to the rescue. They found the handbag which had 120/- . The total value was Ks hs.320/- . They were all recovered.”

The facts, as led by the Prosecution do not disclose the offence charged. For instance the nexus between the Appellant and the offence is not shown. The nexus between the Appellant and the recovery of the stolen hand bag is also not shown. The circumstances leading to the Appellant's arrest is also not shown. I find that the learned trial magistrate erred in entering a conviction on the offence charged. I find that a miscarriage of justice has been occasioned and that the Appellant was prejudiced. The conviction is unsafe and accordingly it is quashed and the sentence set aside.

On retrial, the Appellant has been in prison since may 2004, five months since conviction. That period is long considering the nature of the offence and the value of the stolen items. I will find that the interests of justice do not require a retrial. Accordingly I order that the Appellant be set free unless he is otherwise lawfully held.

Dated at Nairobi this 21st day of October 2004.

LESIIT

JUDGE

Read, signed and delivered in the presence of;

LESIIT

JUDGE