

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 23 OF 2003

FELICE NYAGA.....APPELLANT
V E R S U S
REPUBLIC.....RESPONDENT

(From conviction and sentence of G. Oyugi D.M. II in Meru Chief Magistrate's Court Criminal Case No. 2614 of 2002).

JUDGMENT OF COURT

The appellant Felice Nyaga was originally charged with the offence of stealing by servant contrary to section 281 of the Penal Code. He was convicted and sentenced to serve a prison sentence of 18 months. He appealed against both the conviction and the sentence. The sentence was meted out on 21/2/2003. The appellant is on bond/bail pending the hearing and final determination of the appeal.

When the appeal came up for prosecution, the State Counsel Mr. Muteti rightly conceded the same on the ground that the trial prosecution was conducted by a person not competent to prosecute under the provisions of Section 85 of the Criminal Procedure Code. He requested for retrial. Miss Mwangi who appeared for the appellant however, opposed an order for a retrial.

I have perused the records. The appellant was charged with theft of Ksh.119,000/- not a petty amount by any standards. There was no indication that the prosecution witnesses would not be available if a retrial were ordered. The offence was said to have been committed as recently as 2002 and the sentence was meted out in February last year. The appellant was released on bail before serving the sentence.

It is the view of the court therefore, that it will be in the interest of justice that there be a retrial.

The trial at the lower court is declared a nullity. The conviction is quashed and the sentence of 18 months set aside forth-with. There shall be a retrial of the appellant before a different but competent magistrate. It is so ordered.

Dated and delivered at Meru this 18th day of November 2004

D.A. ONYANCHA
JUDGE

