

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 145 OF 2003

(From original conviction (s) and Sentence(s) in Criminal case No. 3917 of 2002 of the Chief Magistrate's Court at Makadara (Miss R. Oyaro- D.M.)

STEPHEN MBOGO NJUE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant **STEPHEN MBOGO NJUE** was sentenced to serve 3 years imprisonment with hard labour for the offence of **HANDLING STOLEN GOODS** contrary to **Section 322(2)** of the **Penal Code**. He was aggrieved by the conviction and sentence and so lodged this Appeal.

The learned counsel for the State conceded the Appeal on grounds that part of the Prosecution of the case was conducted by an unqualified Police Prosecutor. I have perused the record of the trial court. **P.C. MARUBU** conducted part of the prosecution of the case. That was in blatant contravention of sections **85(2)** and **88** of the **Criminal Procedure Code** that rendered the entire proceedings a nullity. Accordingly I quash the conviction and set aside the sentence.

The learned counsel for the state, **MISS MWENJE** did not seek a retrial. The Appellant submitted that he had one month before he completed sentence. Looking at the record, his submission on the sentence remaining to be served is true.

I have considered that the Appellant was sentenced to three years, which sentence he has virtually almost served in full; I have also considered the facts and circumstances of the case. It is my conviction that the interest of justice will best be served if no order is made for the retrial of this case.

I therefore, decline to order for retrial. I order that the Appellant be set free unless otherwise he is lawfully held.

Dated at Nairobi this 10th day of December 2004.

LESIIT
JUDGE

Read, signed and delivered in the presence of;

LESIIT
JUDGE