



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO.2 OF 2001**

**(From original conviction and sentence in Criminal  
Case No.2451/2000 of the Senior Resident Magistrate's  
Court at MOLO -J. KIARIE (S.R.M.**

**PETER KARIUKI NDEGWA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDEN**

**J U D G M E N T**

The Appellant has appealed against the sentence of 4 years imprisonment and 4 strokes in Count 1 and 1 year's imprisonment in Count.2 The prison terms were to run concurrently. The Appellant had pleaded guilty to the charge. He now urges this court to find that the sentence was excessive. It is unopposed.

The offences were STEALING IN A DWELLING HOUSE contrary to S.279(b) of the Penal Code and STEALING contrary to S.275 of the Penal Code.

When the charge was read out to the Appellant, he admitted it.

The court recorded that it had entered a plea of guilty. The facts were therefore read and he admitted them.

In the notorious case of **ADAN -V- REP.** 1973 EA 455 the court held that conviction on a plea of guilty should always follow the facts of the case as led by the prosecution. In other words the facts of the case should always precede conviction.

In this case conviction preceded the facts and that is erroneous.

It is fatal to the case. Even though no appeal lies on a plea of guilty, conviction can be challenged on the grounds that the sentence was illegal. Even though the Appellant has not raised the issue, I do find that the plea taking was defective and that the conviction was irregular and should not be allowed to stand.

On whether court should order a retrial, I do find that the Appellant has served 2 years and 3 months out of the 4 years he was sentenced to. He has served a substantial part of the sentence and it would not serve the interest of justice to order for a re-trial.

I will accordingly quash the conviction, set side the sentence and order for the immediate release of the Appellant unless otherwise lawfully held.

**Dated and delivered at Nakuru this 18th day of March, 2003.**

**JESSIE LESIIT**

**JUDGE**