

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.9 OF 2001

(From original conviction and sentence in Criminal
Case No.43/2001 of the Senior Resident Magistrate's
Court at NAIVASHA – B. F. ODHIAMBO(S.R.M.)

RAYMOND KIPLANGAT KIPTOO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the sentence of 3 years imprisonment and 1 stroke of the cane for two counts of STEALING FROM A LOCKED MOTOR VEHICLE contrary to Section 279(g) of the Penal Code. He had pleaded guilty to the charges. He prays for mercy and leniency from the court on grounds he was remorseful and had pleaded guilty to the charge. The appeal is unopposed. The Learned Counsel has also pointed out that the plea of guilty entered against the Appellant was equivocal.

I do agree. First the Appellant was convicted by the court after admitting the charge and its particulars before the prosecution gave the facts of the case.

That is defective and fatal to the prosecution case. In the case of ADAN –V- REP. 1973 EA 445 the court held that the facts of the case should always precede a conviction and where that is not followed the conviction is irregular. In addition to convicting the Appellant before the facts were provided by the prosecution, the facts themselves did not support the charge and neither did they disclose any offence. The facts implicated one JAMES GITONGA and not the Appellant. By pleading to those facts, all the appellant was admitting is that a third party, not charged with him in the case had stolen. The conviction was irregular. The court also passed an irregular sentence. Thus:-

***“Accused to go to prison for 3 years and receive one stroke of the cane in count.2.
Sentence to run concurrently.”***

With due respect to the trial Magistrate, it is not clear to which count the sentence passed applied. There were two counts. The sentence should have been clear, in relation to the two counts, as to what term the Appellant, was to serve.

The entire plea was irregularly taken and the sentence imposed not clearly stated. This was fatal and the conviction was wrong. The Appellant has served one year of the 3 years imposed. That is a substantive part of the sentence. It will not serve the interest of justice if the court orders a retrial in the case.

Accordingly, I quash the conviction, set aside the sentence and order that the Appellant be set at liberty unless otherwise lawfully held.

Orders accordingly.

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

JESSIE LESIIT

JUDGE