



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS**

**CRIMINAL APPEAL NO. 197 OF 1996**

***SIMON NJENGA NDUNGU ::: APPELLANT***

***VERSUS***

***REPUBLIC ::: RESPONDENT***

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

The appellant was charged with others in the lower court at Machakos with the principal offence of stealing C/s 275 Penal Code in that on the night of 11th/12th November 1994 at Athi River, Machakos District they stole 18 bags of cement, the property of M/s Continental Builders Limited.

The appellant who was accused No.8 with another faced the alternative charge under S.322(2) Penal Code in that on 12.11.94 at Embakasi Estate Machakos:

“..... Otherwise than in the cause (sic) of stealing jointly dishonestly handed 18 bags of cement knowing or having reasons to believe that they were stolen or unlawfully obtained.”

The appellant after trial was convicted on the handling charge C/s 322(2) Penal Code and ordered to served 5 years imprisonment plus hard labour. Had the Learned Trial Magistrate looked up his law at the time he pronounced the sentence he could have added that the appellant be under police supervision for 5 years after release.

A 3-point petition of appeal was filed on 17.7.96 on the basis that the Learned Trial Magistrate was in error to convict as he did under S.322(2) Penal Code because there was no evidence to support that finding. That the appellant had given a satisfactory explanation as to how he came by the 18 bags of cement yet the Learned Trial Magistrate did not accept that explanation. And that the sentence was harsh and excessive.

When the appeal came up for hearing the Learned State Counsel conceded the 20 appeal and rightly so on account of a vague charge which did not specify what nature/mode of handling the appellant had been found committing.

As per the case of **SELIMIA OWUOR & ANOTHER VS. R CR.A.68/99**

(C.A. unreported),

a charge of handling should say that one either dishonestly received, retained or undertook disposal of the stolen goods. It should not be a blanket charge which becomes bad for duplicity or silent on what mode of handling the appellant is guilty of. That renders a charge vague as was the case here and the appellant was prejudiced in his trial.

In sum the appeal is allowed. Conviction quashed, sentence set aside. The appellant to be set free forthwith unless otherwise lawfully held.

Judgement accordingly.

**Delivered on 22nd January 2001.**

**J. W. MWERA**

**JUDGE**