

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.181 OF 2001

STANLEY MUTITO MUTETI APPELLANT

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH CRIMINAL APPEAL NO.182 OF 2001

JAMES WANDIRA KAMAU APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being appeals from Original Conviction and Sentence in Criminal Case
No.495 of 2000 of the Senior Resident Magistrate's Court at Voi –T.K.
Kimutai, DM.II (Prof))

JUDGMENT

Stanley Mutito Muteti and James Wandira Kamau were both charged with offence of stealing contrary to Section 275 of Penal Code. Alternatively with Handling stolen property contrary to Section 322(2) Penal Code and convicted. They appealed against conviction and sentence to serve 18 months imprisonment. This was on the count of stealing.

The court notes that the State through Ms Kwena State Counsel does not oppose the appeal on the grounds that it is her view that the prosecution did not prove its case beyond reasonable doubt. There was no investigations carried out and the person who appears to have committed the offence was not charged. The prosecution called 7 witnesses, gave contradictory evidence as to the amount of fuel taken away. There is also no evidence as to how the fuel was disposed of.

The appellants were employee of Caltex and their role was to sell fuel supplied by Caltex. The appellants on their defence said that they were requested by their employer to go to Kenya Broadcasting Corporative Station to assist the director (officer-in-charge) to transport some fuel to another station. They were not going there to steal.

I have perused the record and considered the submissions of counsel and I am convinced that the appellants had no intention to steal the fuel. The police inquired only as to those who was on the scene and not who stole the oil, and there was no further investigations. I therefore quash the conviction and set aside the sentence. The appellants shall be set free at one unless held for other lawful causes.

Dated at Mombasa this 1st Day of October 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read before Nyaga holding brief for Odiaga, and

Ms. Kwena for State.

J. KHAMINWA

COMMISSIONER OF ASSIZE