



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 49 OF 2013**

IDD CHENGO ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From original Conviction and Sentence in Criminal Case No. 157 of 2013 of the Chief Magistrate's Court at Mombasa – Hon. Odenyo - SPM)*

**JUDGMENT**

**IDD CHENGO** hereinafter referred to as the Appellant was Convicted and Sentenced to five (5) years Imprisonment for the offence of stealing of motor vehicle parts contrary to Section 279 (g) of the Penal Code.

The particulars being that:-

***“On the 14th day of January, 2013 at Changamwe area – Mombasa County jointly stole one Tachograph of motor vehicle registration number KBC 072 Z Mitsubishi Benz Actios valued at Ksh. 25,000/= the property of JAMAL MKUBWA KABILIA”.***

The Appellant pleaded guilty to the charge and was Convicted on his own plea.

Being dissatisfied with the Conviction and Sentence, the appellant has lodged this appeal. The grounds being that the plea was not unequivocal.

That the facts did not disclose an offence.

That it was not clear which language was used in taking the plea and in what language the facts were read to the appellant.

The appeal is opposed on the grounds that it contravenes Section 348 of the Criminal Procedure Code which provides,

***“No appeal shall be allowed in the case of an Accused person who has pleaded guilty and has been Convicted on that plea by a subordinate Court except as to the extent or legality of the Sentence”.***

It is further contended that the Accused understood the charge and that there was interpretation from English to Swahili language. That in mitigation the Appellant stated that he would not repeat the offence again.

That the Sentence of five (5) years is illegal as the offence carries an Imprisonment term of fourteen (14) years.

Counsel for the defence has cited the case of Adan –Vs- Republic 1973 EA 445 in which it was held,

***“The charge and all essential ingredients of the offence should be explained to the Accused in his language or in a language he understands.***

- ii. ***The Accused own words should be recorded and if they are an admission, a plea of guilty should be recorded or***
- iii. ***The prosecution should then immediately state the facts and the Accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;***
- iv. ***If the Accused does not agree the facts or raises any questions of his guilt his reply must be recorded and change of plea entered;***
- v. ***If there is no change of plea a Conviction should be recorded and a statement of the facts relevant to the Sentence together with the Accused's reply should be recorded”.***

The facts read to the Appellant were thus,

***“On the 4th January, 2013 the driver of a motor vehicle KBC 072 Z parked the said vehicle in Changamwe area. He came back later. He found one tachograph missing. The matter was reported to police at Changamwe. Later the Accused was arrested and escorted to the police station. The item was later recovered. It was valued at Ksh. 25,000/=. Accused was then charged with this offence”.***

The Appellants was charged with stealing of motor vehicle parts contrary to section 279 (g) of the Penal Code which provides,

***“If the theft is committed under any of the circumstances following, that is to say if the offender, in order to commit the offence, opens any locked room, box, vehicle or other receptacle, by means of a key or other instrument the offender is liable to imprisonment for fourteen years”.***

A reading of the facts do not indicate that the appellant opened any locked room, box, or vehicle. There is no indication of what means were used if any to open the vehicle. Apart from the arrest of the Appellant, there is no linkage or rebus created between him and the recovered technograph. It is not shown that the tachograph was recovered from him. In short the facts presented before the High Court did not disclose the offence of stealing of a motor vehicle part contrary to section 279(g) of the Penal Code.

A perusal of the records also do not indicate what language was used, whether it was Kiswahili or it was English.

I am satisfied that the facts presented before the Court did not disclose the offence the Appellant was charged with and that the language used was not indicated in the proceedings.

This appeal has merit. The Conviction is quashed and Sentence set aside.

The Appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **5th** day of **June, 2014**.

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**M. MUYA**

**JUDGE**

**5TH JUNE, 2014**

***In the presence of:-***

Learned Counsel for the Defene Mr. Mulandi

Learned State Counsel Mr. Ayodo

Applicant present

Court clerk Musundi

**M. MUYA**

**JUDGE**

**Court:** Copies of the Judgment to bee furnished to the Defence and the Director of Public Prosecution.

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**M. MUYA**

**JUDGE**

**5TH JUNE, 2014**