

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 162 OF 1999

(From original conviction and sentence in Criminal case no. 532 of 1999 of
the Principal Magistrate's Court at Kiambu: J.G. Kingori (Esq)

SAMUEL NJAU NGUGI.....APPELLANT
VERSUS
REPUBLICRESPONDENT

J U D G M E N T

The appellant allegedly pleaded guilty to the charge of stealing from a locked motor vehicle contrary to Section 279 (c) of the penal Code. On conviction he was sentenced to 4 years imprisonment with 4 strokes of the cane. He appealed.

At the hearing of the appeal the learned counsel for the state conceded the appeal but asked for a retrial. The learned counsel for the appellant however submits that the appellant has suffered enough and should be set free.

The proceedings before do not indicate what language was used in the lower court. The exhibits allegedly recovered were not produced before the learned trial magistrate. Perhaps it should be pointed out that proceedings even when the accused pleads guilty amount to a trial and efforts must be made to present the exhibits if any. The plea was not therefore an unequivocal admission of guilt.

The offence attracts sentence of 14 years with corporal punishment. The appellant was sentenced to 4 years with 4 strokes. He has only served one month of the said sentence. In my judgment this is an appropriate case for a retrial.

Accordingly, this appeal is allowed, conviction quashed and sentence set aside. The appellant shall be subjected to a retrial before a different magistrate of competent jurisdiction.

Orders accordingly.

Delivered and dated at Nairobi this 17th day of March, 1999.

A. MBOGHOLI MBOGHOLI
JUDGE