

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
CORAM: KWACH, OMOLO & SHAH, J.J.A.
CRIMINAL APPEAL NO. 43 OF 1999
BETWEEN

LARS MICHAEL FLUGGEAPPELLANT
AND
REPUBLICRESPONDENT

**(Appeal from a judgment of the High Court of Kenya at
Mombasa (Waki J) dated 24th March, 1999
in
H.C.CR.A. NO. 161 OF 1998)**

JUDGMENT OF THE COURT

We are satisfied the High Court was not entitled to summarily reject the appeal under the provisions of section 352 (2) of the Criminal Procedure Code . A casual look at the appellant's grounds of appeal to the High Court clearly shows that the appeal was not simply brought on the grounds that the conviction was against the weight of evidence or that the sentence was excessive. The grounds clearly transcended those grounds and that being so, the High Court had no jurisdiction to summarily reject the appeal. Mr. Gacivih for the Republic properly concedes the appeal. We allow the appeal, set aside the Judge's order of summary dismissal and remit the appeal to the High Court with a direction that the appeal be admitted to hearing and then determined according to law. We so order.

**Dated and delivered at Mombasa this 26th day of July,
1999.**

R. O. KWACH -----

JUDGE OF APPEAL

R. S. C. OMOLO -----

JUDGE OF APPEAL

A. B. SHAH -----

JUDGE OF APPEAL I certify that this is a true copy of the original.

DEPUTY REGISTRAR