



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU**

CRIMINAL APPEAL 50 OF 1994

DANIEL KAMAU NGANGA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at Nakuru (Mr. Justice D.M. Rimita) dated
21/4/94**

IN

H.C.CR.A. NO. 7 OF 1994)

JUDGMENT OF THE COURT

The appellant Daniel Kamau Nganga was, on the 8th day of October, 1993, convicted of five counts, namely, stealing contrary to section 275 of the Penal Code, forgery contrary to section 349 of the Penal Code, personating contrary to section 382 of the Penal Code, uttering a false document contrary to section 353 of the Penal Code, attempting to obtain money by false pretences contrary to section 313 as read with section 389 of the Penal Code and conspiracy to defraud contrary to section 317 of the Penal Code.

The appellant was sentenced to serve 5 years imprisonment on each count; the sentences were concurrent.

The appellant appealed to the High Court and put forward six (6) grounds of appeal by which grounds the appellant complained of the learned trial magistrate erring in law and fact. The learned Judge summarily rejected the appeal under section 352(2) of the Criminal Procedure Code.

The learned state counsel Miss Ndirangu concedes that the appeal should not have been summarily rejected and she further drew our attention to there being no evidence of an expert witness in relation to the count on forgery.

Section 352(2) aforesaid provides:

"(2) where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the judge

certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint."

The petition in appeal filed by the appellant raises in all grounds, alleged errors in both law and fact. This fourth ground of appeal does raise the question of no expert evidence being called to prove forgery. There is also the ground of appeal relating to another magistrate completing the trial.

It is not our province at this stage to go into merits of the appeal. Ours is merely to say that in all the circumstances, the learned judge erred in summarily rejecting the appeal where he had no jurisdiction to do so, and we do say so.

The appeal is hereby allowed and the summary rejection by the learned judge in the superior court is set aside. We direct that the appellant's appeal to the High Court be returned for a judge to admit it to hearing.

Dated and delivered at Nakuru this 20th day of February, 1995.

A.M. AKIWUMI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR