



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAKURU

CRIMINAL APPEAL 74 OF 1994

WESLEY TUITOK KIPNGOK.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court at Nakuru (Mr. Justice D. M. Rimita) dated

18th February, 1994

IN

H.C.CR.A. NO. 418 OF 1993

JUDGMENT OF THE COURT

The appellant Wesley Tuitok Kipngok was convicted on his own plea by the Resident Magistrate, Molo, of the offence of stealing contrary to Section 275 of the Penal Code and sentenced to 2 years imprisonment. His advocate, Mr. Mirugi Kariuki, filed his petition of appeal in the High Court of Kenya at Nakuru on December 7, 1993. The main grounds thereof were that the trial magistrate misdirected himself on the procedure for taking pleas as laid down in the case law; that the elements of the charge of stealing contrary to Section 275 of the Penal Code were not explained to the appellant; that the appellant might not have understood the language of the Court and that it was an error in law not to provide him with an interpreter; and finally that the facts as stated by the prosecutor did not disclose an offence of stealing upon which the appellant could be convicted. In February 1994, Rimita J. summarily rejected the appeal under section 352(2) of the Criminal Procedure Code.

An appeal falls within Section 352(2) only if the ground of appeal raises any or both of the following points:-

1. the conviction is against the weight of evidence, or
2. the sentence is excessive.

On our part we have considered the petition of appeal of the appellant and it is clear that the grounds of appeal before the High Court were not confined to the two matters under section 352(2) aforesaid for

which an appeal may be summarily rejected. We allow the appeal; set aside the order summarily rejecting the appeal and remit it to the High Court at Nakuru with the direction that the appeal be admitted to hearing by a judge other than Rimita J.

We so order.

Dated and delivered at Nakuru this 21st day of February, 1995.

J. M. GACHUHI

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR