



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAKURU

CORAM: COCKAR, OMOLO & TUNOI, J.J.A.

CRIMINAL APPEAL NO. 39 OF 1992

BETWEEN

JOSEPH NJOROGE NJUGUNA ..... APPELLANT

AND

REPUBLIC .....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Eldoret (justice Aganyanya) dated 27th August, 1991 in

H.C.CR.A. NO. 133 OF 1989)

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**JUDGMENT OF THE COURT**

This is a second appeal and as such only points of law can be argued before us. As far as we can see, there is really no point of law raised before us by the appellant. Samuel Nyamiwa (PW 1) who said he was robbed of his vehicle swore that this appellant was one of the two people who approached him and pretended to hire PW 1 to take them in his vehicle to some place. PW 1 swore the appellant sat with him in front. When PW 1 summoned help the owner of the vehicle (PW 2) and the police officer (PW 3) joined PW 1 in swearing that they came upon the appellant and his colleagues in the stolen vehicle and that it was the appellant who was driving the vehicle. His colleagues who were not driving escaped from the vehicle and disappeared. The appellant was caught right away. His explanation before the magistrate that he had been arrested at a petrol station was repelled by the magistrate as false and the High Court confirmed that position. There is really nothing on record from which we could think that both courts below came to a wrong conclusion. The evidence fully justified the conviction recorded against the appellant. He was convicted on sound evidence and his appeal against conviction must fail.

The appellant was sentenced to ten years' imprisonment with eight strokes of the cane and the inevitable five years of police reporting order upon release from prison. The prison sentence of ten years on a first offender looks to us to be extremely severe and we are somewhat disturbed that the learned first appeal judge did not find it fit to interfere. However, the sentences were lawful and there is not much this court can do about them. In the event this appeal fails in toto and we order it dismissed.

**Dated and delivered at Nakuru this 21st day of February, 1994.**

**A. M. COCKAR**

**JUDGE OF APPEAL**

**R. S. C. OMOLO**

**JUDGE OF APPEAL**

**P. K. TUNOI**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**