



IN THE COURT OF APPEAL OF KENYA

AT MOMBASA

CRIMINAL APPEAL 63 OF 1994

GEORGE ITIOTIA KARUKU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a Judgment, Order, or as the case may be) of the High Court of Kenya at Mombasa
(Mr. Justice T. Mbaluto) dated 15th October, 1993**

IN

H.C.C.R.A. NO. 261 OF 1993)

JUDGMENT OF THE COURT

This is an appeal from the decision of the High Court in which the learned judge upheld the finding of the Magistrate to the effect that the appellant had knowingly disposed of by selling, and thereby committing the offence of stealing parts of an aircraft, which he well knew did not belong to him or to his superior whom he alleged, had asked him to cut up the aircraft. He also upheld the Magistrate's conclusion that the defence of "superior orders" was in the particular circumstances of the case, unavailable to the appellant. Even if the appellant's superior had instructed the appellant as alleged by the appellant, there was sufficient independent evidence which established that the appellant disposed of parts of the aircraft knowing full well that this was without the consent of owner of the aircraft.

We have there two concurrent findings of fact with which more over, we are in full agreement.

The appellant's grounds of appeal is to the effect that he did not demolish the aircraft on his own and sold the parts on the instructions of his superior. It may be well be that the appellant thought that the aircraft had been abandoned, but the circumstances of the case show clearly that this is not a case of "finders Keepers" on the basis of the concurrent finding of fact, we cannot but agree with the learned judge that the defence of "superior orders", as was indeed the same conclusion that the magistrate came to, cannot avail the appellant.

In the result, we cannot but come to the conclusion that the appeal must be dismissed.

It is so ordered.

Dated and delivered at Mombasa this 18th day of July, 1994

J.M. GACHUHI

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.M. AKIWUMI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR