



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MOMBASA**  
**CRIMINAL APPEAL NO 550 OF 1989**

**TEMBERE..... APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(From original conviction and sentence in Criminal Case No 833 of 1989 of the Resident Magistrate's Court at Kilifi, P M Ndungu, Esq, RM)

**JUDGMENT**

Appellant pleaded guilty to the alternative charge of handling stolen property contrary to section 322(1) of the Penal Code.

The particulars of the charge merely stated that the accused handled. The complainant's *kiosk* was broken into on 3/9/89 and the accused was found in possession of some of the stolen goods on the following day. The facts stated to appellant by the prosecutor merely indicated that the goods were found in the house of the appellant after search and that he did not explain how he became possessed of them. One of the important elements of the charge of handling is that the accused must know or have reason to believe that the goods were stolen. That element of the charge was not stated in the particulars of the offence in the facts stated in court by the prosecutor.

Another vital element of the charge of handling is that the accused must dishonestly receive or retain etc.

The particulars of the charge did not state that the nature of handling whether by receiving, retaining, etc and more importantly did not state that the possession or receipt was dishonest. The facts stated in court do not show that any dishonest receiving, retaining etc.

Now, the appellant states in his petition that he had no knowledge of whether the property had been stolen or otherwise and that he was in innocent possession of the goods.

It is clear that the charge did not disclose the offence of handling stolen property and the facts stated did not contain all the elements of the offence. The result is that the appellant did not validly plead guilty to the charge of handling.

The learned magistrate merely recorded "It is true".

The charge of handling stolen property is a highly technical offence and the plea recorded must show that the accused has answered to all the elements of the charge. The plea of guilty was recorded by the learned magistrate is highly irregular.

The appellant was sentenced to 3 years imprisonment in September, 1989. He was found in possession of the stolen goods which are valued shs 6000/-. The appellant was charged with other offences which he denied. He has served about 6 months' imprisonment.

In the circumstances, it is in the interest of justice that the appellant be retried.

For the above reasons, I allow the appeal, quash the conviction and set aside the sentence.

The appellant to be re-tried by another magistrate of competent jurisdiction.

If appellant is not serving any other sentence, to remain in remand pending re-trial.

Dated and Delivered at Mombasa this 30<sup>th</sup> Day of April, 1990

**E.M. GITHINJI**

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**JUDGE**