



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**  
**CRIMINAL APPEAL 47 OF 1992**

**GEORGE KIBE MWAURA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from an order of the High Court of Kenya  
irobi (Mr Justice Mbogholi) dated 30<sup>th</sup> November, 1990,**

**In**

**H.C.CR.A. No 1281 of 1990)**

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**JUDGMENT OF THE COURT**

The appeal to the High Court was based on 6 grounds. Leaving aside the other grounds these is ground No 5 which refers to the defence raised by the appellant which was his explanation on how his finger prints could have come to be on the car that was stolen. Clearly the High Court ought not to have summarily rejected this appeal without considering the grounds of appeal. Section 352(2) of the Criminal Procedure Code allows a summary rejection only when the appeal is brought on the ground that the conviction is against the weight of evidence or that the sentence is excessive. Miss Kamau, the State Counsel, in our view has very rightly conceded the appeal so that the High Court may hear the appeal filed by the appellant on 23<sup>rd</sup> October, 1990.

The appellant has requested that the High Court be directed to hear the appeal on priority basis. We therefore, allow this appeal on the ground that it ought not to have been summarily rejected by the High Court and order that the appeal to the High Court be heard by a different judge. We also direct that the appeal be heard with expedition.

Dated and delivered at Nairobi this 15<sup>th</sup> day of November, 1992.

A.M. COCKAR

JUDGE OF APPEAL

M.G. MULI

JUDGE OF APPEAL

A.M. AKIWUMI

JUDGE OF APPEAL