



IN THE COURT OF APPEAL

AT NAKURU

(Coram: Masime, Gicheru & Kwach, JJA)

CRIMINAL APPEAL NO 97 OF 1989

KARIUKI.....PLAINTIFF

VERSUS

REPUBLIC.....DEFENDANT

JUDGMENT

September 26, 1989, **Masime, Gicheru & Kwach, JJA** delivered the following judgment.

The appellant was convicted on his own plea of guilty of the offence of removing forest produce without a permit from the chief conservator contrary to section 8(1) (a)(i) of the Forests Act (cap 385), and fined Kshs 1,000 or 2 months imprisonment in default. His appeal to the High Court was summarily rejected under section 352 (2) of the Criminal procedure Code.

The summary rejection of the appellant's appeal was wrong for two reasons. First, the plea itself was not unequivocal.

Secondly, the particulars on the charge sheet did not disclose an offence under section 8(1)(a)(i) because there is no allegation that the alleged offence, if any, was committed within a forest.

It must follow from this that the appellant's appeal to the High Court raised an issue of law on which he was entitled to be heard on the merits and its summary rejection was therefore wrong. In normal circumstances, this court would make an order setting aside the summary rejection and directing the High Court to deal with the appeal in accordance with the law. But in this case, in the interests of justice, we propose to exercise the power given under section 3(2) of the Appellate Jurisdiction Act (cap 9) and make the order which should have been made by the High Court.

We allow this appeal, set aside the summary rejection and the conviction entered by the magistrate and dismiss the charge laid against the appellant.

The fine of Kshs 1,00, if already paid, is to be refunded to the appellant.

Those are the orders of the court.

Dated and Delivered at Nakuru this 26th September, 1989

J.R.O MASIME

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JUDGE OF APPEAL

J.E GICHERU

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JUDGE OF APPEAL

R.O KWACH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR