



**REPUBLIC OF KENYA**  
**IN HIGH COURT OF KENYA**  
**AT NAIROBI**

**CRIMINAL APPEAL NO 487 OF 1986**

NDUNGU.....APPELLANT

V

REPUBLIC.....DEFENDANT

**JUDGMENT**

November 27, 1986 Bosire J delivered the following Judgment.

I consolidated the appellant's appeals.

On 23rd December 1985 the both appellants were convicted upon their pleas of guilty to a charge of stealing from the person contrary to section 279 (a) of the Penal Code, particulars being that on December 21, 1985, at Gikambura Village, in the Kiambu District of the Central Province jointly stole cash Kshs 500 from the person of Lawrence Njenga Gitau. They were both sentenced to 18 months imprisonment each and were ordered to receive 2 strokes of the cane each. Their appeal is against the entire decision of the 1st class district magistrate at Kikuyu.

The substance of submissions by Mr S M Otieno, counsel for the both appellants is that the plea of guilty was inadequate. He also submitted that the facts outlined by the prosecution did not disclose the offence charged but the greater offence of robbery. Learned view. The particulars of the charge are clearly at variance with the facts as outlined. In absence of any amendment the prosecution are always bound by the particulars of the charge they prefer against an accused. The convictions are unsafe.

Learned state counsel prayed that I refer the case back to the lower court for retrial. I have anxiously considered the request but I am unable to accede to it. The appellants have already served about eleven months of the sentence imposed on them. I do not consider it to be in the interests of justice to subject them to a second trial. I quash convictions and order their immediate release from prison unless they are held under other lawful warrant. Order accordingly.

**Dated and delivered at Nairobi November 27, 1986.**

**S.E.O BOSIRE**

**JUDGE**