

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO 23 OF 1983

**(From Original Conviction and Sentence in Criminal
Case No.1208 of 1982 of the District Magistrate's
Court at Kikuyu KamauNjuguna Esq.)**

JOSEPH NJUGUNA KAMAU APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CORAM: O'Kubasu (J)

Appellant absent, not wishing to be present and unrepresented.

A R. Rebelo (Senior State Counsel.) for Respondent

JUDGMENT

The appellant was convicted on a charge of stealing of a motor vehicle contrary to section 278A of the Penal Code and sentenced to 12 months imprisonment plus 5 strokes of the cane. The appellant now appeals against both conviction and sentence.

The learned Senior state Counsel (Mr. Rebelo) did not support conviction

The evidence on record shows that the vehicle in question was found only 100 metres from where it had been parked. Even if the evidence of PW5 and PW4 had to be accepted it is clear that an intention to steal had not been made out.

Perhaps the appellant might have been charged with attempted theft of motor vehicle.

In view of the foregoing this appeal is allowed, conviction quashed and sentence set aside. The appellant (if still in prison) is to be released immediately unless otherwise lawfully held. Order accordingly.

Delivered at Nairobi this 8th day of November, 1983.

E O'KUBASU

JUDGE