



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 882 OF 1975**

**NG'ANG'A.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Second Class Magistrate convicted the appellant of housebreaking and theft and awarded him consecutive prison sentences for having committed those offences. Concurrent sentences should have been awarded for this one criminal transaction. It is true that the appellant has a bad record but that is beside the point. The case should have been taken before a magistrate of a higher status. In *Katungo Mbuki v Republic* [1962] EA 682 at pages 683 and 684 this court said:

“... if the offence is one in respect of which the prosecution considers the court has insufficient powers of punishment then it is his duty to take steps to bring the offender or have him brought before a court which has adequate powers of punishment.

But, of course, the magistrate should, in view of the appellant’s antecedents have committed him for sentence under Section 221 of the Criminal Procedure Code. The appeal against conviction is dismissed. The appeal against sentence succeeds to the extent that the prison sentences will run concurrently.

**Dated and Delivered in Nairobi this 11th day of February 1976.**

**E.TREVELYAN**

**S.K.SACHDEVA**

**JUDGE**

**AG. JUDGE**