



REPUBLIC OF KENYA
IN THE COURT OF APPEAL

AT NAKURU
(CORAM: GICHERU, TUNOI & LAKHA, JJ.A)
CRIMINAL APPEAL NO. 34 OF 2001

BETWEEN

STEPHEN NJOROGE NDERITUAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from the Judgment of the High Court of Kenya at

Nakuru (Mr. Justice Rimita) dated 2nd June, 2000

in

H.C.CR. APPEAL NO. 274 OF 1999)

JUDGMENT OF THE COURT

In July, 1998 the appellant approached **JOHN MWANIKI KIMANI (P.W.12)** with a view to purchasing one acre of the latter's 3 acres piece of land - **Plot NO. 42** - within Michatha farm in Molo Township of the Nakuru District. P.W.12 agreed to sell the said one acre of land to the appellant at a price of K.Shs.200,000/=. The appellant neither paid this sum of money nor was the one acre piece of land aforementioned transferred to him. Subsequently, **P.W.12** learnt that the appellant was sub-dividing the one acre piece of land into plots measuring 30 feet by 70 feet and was selling them to various people at a price of K.Shs.15,500/= per plot. **P.W.12** therefore wrote to the appellant over the sale of part of his piece of land in respect of which he had not given him instructions to do so. Thereafter, several people came to him claiming to have purchased respective plots on the one acre piece of land referred to above whereon beacons demarcating these plots were in place. The matter was reported to the police and the beacons were removed. The appellant was then arrested and charged with 12 counts of the offence of stealing by agent from the 12 persons to whom he had sold 15 plots carved out of one acre of **P.W.12's Plot NO. 42** contrary to **section 283 (b) of the Penal Code** .

The particulars of the offence on each of the twelve counts while stipulating the date of the offence, the person to whom it was committed and the subject-matter of the offence read as follows:

"STEPHEN NJOROGE : On at Molo Town in Nakuru District of the Rift Valley Province, being a commercial agent stole the property of which was entrusted to him for the buying of plot No. 42 Michatha."

It would appear from these particulars of the offence that the agency relationship was between the

appellant and each of the 12 complainants in regard to the purchase of the plots delineated in the one acre piece of land which was part of **P.W.12's** 3 acres of land in **Plot No. 42** .

At the hearing of this appeal on 24th September, 2001, the appellant conceded having received and used the money in respect of the 15 plots encompassed in the 12 counts of the offence set out above. That money was entrusted to him by the complainants in the 12 counts aforesaid for the purchase of the 15 plots mentioned above which money he converted to his own use. In these circumstances and this being a second appeal arising from the dismissal of his first appeal by the superior court and his concurrent sentence of 5 years imprisonment being not illegal, this appeal must fail and the same is dismissed.

Dated and delivered at Nakuru this 28th day of September, 2001.

J.E. GICHERU

.....

JUDGE OF APPEAL

P.K. TUNOI

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR