



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT

AT NAIROBI

(CORAM: PORTER J)

CRIMINAL APPEAL NO 1446 OF 1986

BETWEEN

TARIMO..... APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT

(Appeal from the original conviction and sentence of the Resident Magistrate's Court at Nairobi, B Okaya (Miss) dated 14th October 1986, in Criminal Case No 2955 of 1986)

June 15, 1989, **Porter J** delivered the following Judgment.

The appellant was convicted in the court below of theft of a motor cycle contrary to section 278A of the Penal Code, and sentenced to 12 months imprisonment and 6 strokes. The learned trial Magistrate purported to make an order for repatriation.

One day after the theft, the appellant was seen riding as a passenger on the stolen motor bike by two Police Officers who saw them twice. On the first occasion they saw them turn off into the bush when approaching a road block, and later emerging from a side road when they abandoned the motor cycle and ran off.

The learned trial Magistrate was satisfied with these identifications, and on my own assessment of the record I would agree. It was daylight, and the distance involved was not far. The evidence negated the account of the appellant. The appellant was properly convicted and sentence was not excessive.

As to the purported order for repatriation, the learned trial Magistrate gets his jurisdiction for such an order from S 26 A of the Penal Code. He has no jurisdiction to make an order for the repatriation of the appellant.

He only has jurisdiction to make a recommendation to the Minister that the appellant be removed from and remain out of Kenya either immediately, or upon completion of any sentence of imprisonment

imposed.

In this case, I would agree with the learned trial Magistrate that such a recommendation is required in this case. But I would not agree with his way of making the order. The matter remains in the discretion of the Minister.

The “order for repatriation” is therefore set aside and an order is substituted that the court recommends to the Minister that the appellant be removed from and remain out of Kenya after his release.

Otherwise, appeal against conviction and sentence dismissed.

Delivered this 15th day of June, 1989

PORTER

JUDGE

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

DEPUTY REGISTRAR



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