



**Nyaga v Republic (Criminal Appeal E042 of 2023)
[2024] KEHC 10478 (KLR) (27 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E042 OF 2023
LM NJUGUNA, J
AUGUST 27, 2024**

BETWEEN

JOSHUA MUTEMBEI NYAGA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising from the decision of Hon. N. Kabara, SPM in Magistrate's Court at Siakago in Criminal Case No. E728 of 2022 delivered on 26th October 2023)

JUDGMENT

1. The appellant has filed a petition of appeal dated 11th December 2023, seeking that the appeal be allowed, the conviction be quashed, the sentence of 3 years imprisonment be set aside and the appellant be set at liberty. The appeal is premised on grounds that:
 - a. The learned trial magistrate erred in law and fact by convicting the appellant without considering that the evidence adduced by the prosecution was inadequate to sustain a conviction;
 - b. The learned trial magistrate erred in law and fact by convicting the appellant without considering that the prosecution's evidence was uncorroborated and was full of inconsistencies hence section 163(1) of the *Evidence Act* was not complied with;
 - c. The learned trial magistrate erred in law and fact by disregarding the appellant's defense without giving cogent reasons; and
 - d. The learned trial magistrate erred in law and fact by relying on the prosecution's evidence which was insufficient and unsatisfactory in law.



2. The appellant was charged with the offence of giving false information to police officer employed in public service contrary to section 129(a) of the [Penal Code](#). Particulars of the offence were that on 18th May 2022 at Kiritiri Police Station in Mbeere South sub-county within Embu County, the appellant informed a police officer at the report office that the motor cycle registration number KMFP 019Z Bajaj Boxer had been stolen outside his rented house at Kwa Makoro area within Kiritiri knowing and believing that it was false in that he had retained the said motor cycle at his residential house at Gikondi village.
3. The appellant pleaded not guilty to the charge and a plea of ‘not guilty’ was entered. The matter proceeded to full hearing. PW1 was PC Halima Idd of Kiritiri Police Station who stated that on 18th May 2022, she was at the report office at the police station when at around 8:20 a.m, the appellant walked in and reported that his motor cycle registration number KMFP 019Z Bajaj Boxer which he had parked outside his rented house the previous night, had been stolen. That she recorded the report in the occurrence book. That on 9th September 2022, PC Mworira told her that the report was false since the motor cycle was found at Gikondi village at the appellant’s residential home. That she recorded her statement on the false report.
4. PW2 was PC Mworira Phineas of Kiritiri Police Station who stated that the appellant had reported loss of his motor cycle which he had parked outside his rental house and the report was recorded by PW1 who also issued him with a police abstract. That on the same day, the appellant reported the loss at Watu Credit offices where he had taken a motor cycle loan. That one Richard Wagura of the said company investigated the alleged loss but he could not find the motor cycle’s location since the tracker had been disabled. That Richard Wagura was informed that the appellant was riding a numberless motor cycle which was suspected to be the alleged lost one. That he reported the matter to the police and then visited the appellant’s Gikondi home where he found the motor cycle inside the appellant’s house under the bed. That Richard identified the motor cycle using its chassis number since its registration number had been removed, and he verified that it was the one alleged to have been stolen. The appellant was arrested and charged with the offence. PW2 produced a copy of the logbook of the motor cycle in the name of Watu Credit Limited, photographs of the said motor cycle, the appellant’s national ID and insurance documents as evidence.
5. Upon close of the prosecution’s case, the court found that the respondent had a case to answer and he was placed on his defense. He chose to remain silent and the court gave its judgment. In its judgment, the trial court found that the prosecution had proved the case against the appellant beyond reasonable doubt and he was convicted accordingly. He was sentenced to 3 years imprisonment.
6. In the appeal herein, the court directed that the parties file their written submissions but only the appellant complied.
7. It was the appellant’s submission that when he lost his motor cycle, he tried to look for it to no avail before he decided to report the matter to the police. That the motor cycle allegedly recovered at his home did not have a number plate and that the police did not care that some parts were missing from it. That he had reached an agreement with Richard Waguru of Watu Credit Company and that he had written a letter to take to the police for release of the motor cycle so that he could continue repaying the loan. He prayed that the court allows the appeal.
8. The issue for determination is whether the appeal has merits.



9. In order to determine the issue, I shall re-examine the evidence adduced at trial, as is expected of a first appellate court. In the case of *Okeno v. Republic* [1972] EA 32 it was held:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court must itself weigh conflicting evidence and draw its own conclusions. It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion. It must make its own finding and draw its own conclusions only then can it decide whether the magistrate’s finding should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

10. The offence herein arises from Section 129 of the [Penal Code](#) which provides:

“Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, the person employed in the public service—

- (a) to do or omit anything which the person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of the person employed in the public service to the injury or annoyance of any person, is guilty of a misdemeanour and is liable to imprisonment for three years.”

11. PW1 testified that the appellant indeed reported the loss of his motor cycle at the station. PW2 stated that an officer at Watu Credit Limited investigated the allegedly lost motor cycle which was traced to the appellant’s house in Gikondi. The said officer from Watu credit company had been informed that the appellant, despite having reported loss of his motor cycle, was seen riding a numberless motor cycle. That the said numberless motor cycle was recovered at the appellant’s home under the bed and it was identified using the chassis number. He produced photographs of the motor cycle showing the chassis number which matches the number on the logbook. The appellant did not offer any defense for consideration by the trial court.

12. As regards the conviction, the trial magistrate proceeded correctly since the evidence against the appellant was overwhelming. This court finds no inconsistency in the prosecution’s evidence and so there is no need to disturb the trial court’s findings in that regard. The relevant provision of the [Penal Code](#) prescribes a sentence of 3 years imprisonment for this offence, which is the sentence that was imposed by the trial court. In the circumstances of the case, I find that the sentence is not excessive and I hereby dismiss the appeal.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF AUGUST, 2024.

L. NJUGUNA

JUDGE

.....for the Appellant

.....for the Respondent

