



**Director of Public Prosecutions v King'ele (Criminal Appeal E074 of 2023)
[2024] KEHC 15202 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL APPEAL E074 OF 2023
MW MUIGAI, J
NOVEMBER 28, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT

AND

BETHWEL MUTINDA KING'ELE RESPONDENT

(Being an appeal from the ruling delivered in Kangundo CMCC no E798 of 2022 by Hon. M.Opanga (SRM) in the Chief Magistrate's court at Kangundo.)

JUDGMENT

1. The accused person was charged with stealing by person employed in public service contrary to section 280 of the Penal code.
2. The particulars of the offence are that on 16th of March at Matetani village, Matetani sub location in Kangundo Sub County within Machakos County, being a public officer to wit senior chief under the office of the president Ministry of Interior and Coordination of National Government stole 2 bags of rice and 3 bags of beans each weighing 50kgs valued at Kshs 25,000 the property of the Government of Kenya which came into your possession by virtue of employment.
3. In the alternative, he was charged with handling stolen goods contrary to section 322(1) (2) of the [Penal code](#).
4. The particulars are that on 16th of March at Matetani village, Matetani sub location, Isinga Location in Kangundo Sub County within Machakos County, otherwise than in the course of stealing, dishonestly received and retained 2 bags of rice and 3 bags of beans each weighing 50kgs valued at Kshs 25,000 the property of the Government of Kenya knowing or having reasons to believe them to be stolen goods.



5. The accused person pleaded not guilty on 26/7/2022 and the matter proceeded for Trial. The charge sheet was amended and the charges were read to the accused on 8/03/2023 who pleaded not guilty and the trial continued.

Trial Court Record

6. The prosecution called twelve (12) witnesses.
7. PW1 was Sussy Nyamusi James, the County Commissioner Kangundo division who stated that on 12/3/2022 they received relief food from the ministry of Public Service senior citizens affairs and special programs. She stated that they received 200 bags of rice 50ks, 360 bags of beans and ten cartons of canned beef 300grams per carton and she called her supervisor and informed him. She stated that he requested that they have a meeting with stakeholders on disaster management on 15/3/2022 about distribution of the relief food. She stated that there were heads of departments, ACCs, chiefs and assistant chiefs and they agreed that food should be distributed as per the sub-locations where each was to get 7 bags of rice, 14 bags of beans and one cartoon of canned beef, the target being the most vulnerable in the society and the needed.
8. It was her testimony that the other food was distributed to the DCCs office and was to be distributed to Kangundo Hospital children office and church based organization with severe needs. They agreed that sergeant Morara and the procurement officer would be in charge of the store. The chiefs were to organize means of transport for distribution to their areas as soon as they could and before they picked the food, Sergeant Tom was to confirm the number of bags and the person picking was to sign from S11 which was to be documented and a report made in the next meeting for evaluation.
9. PW1 stated that on 16th, she went to the office and Sergeant Morara told her that senior chief Isinga picked his ratio 21 bags of rice, 42 bags beans and one carton corned beef. She stated that he has three sub locations and that they were to hold a meeting with stake holders to see how it was distributed.
10. She stated that that evening she got a call from DCIO Kangundo sub-county inquiring whether their office had distributed any relief food and she informed him of their discussion and what the chiefs were to do. That they informed him that they got a tip from the public that the senior chief had taken food to his home and he had sent officers to the accused's homestead and they recovered 2 bags of rice and 3 bags of beans. That the chief was in custody for questioning and other legal actions.
11. She told the court that she immediately called her immediate supervisor and informed him of the same and she also called the chief to confirm if the allegations were true to which he said he had an arrangement with his locational committee to take the said food home. She stated that she cautioned him of what they had discussed.
12. She stated that he was not permitted to have the food at his home. They held a meeting on 22.3.22 to evaluate food distribution and each chief gave them a report on how food was distributed. She said the said chief was before the court and marked the following documents for identification; ministry of public service gender senior citizens affairs dated 7.3.3033, minutes of meeting held on 15.03.22, inventory of food recovered at the senior chief's home, reports made by chief's on food distribution, report by senior chief, minutes of relief food distribution, list of those who benefitted made by chiefs and assistant chiefs and a letter of appointment.
13. Upon Cross examination, she denied asking him 'mbona assistant chiefs wako wamekuchomea'. She indicated that she was not aware that his office had been broken into on 30.11.2021. That he informed her after she called him that the food had been taken for safe keeping and redistribution to the nyumba kumi members. She stated that he brought a report.



14. PW2, Sergeant Morara stated that on 12/3/2022 they got relief food from Nairobi, he was with accused and they got 200 bags of rice and 360 bags of beans each 50kgs and they kept it in a store. He stated that the accused called for a meeting on 15/3/2022 which he attended and each sub location was to get to 7 bags of rice and 14 bags of beans. He stated that there was also corn beef and each chief was to get one carton. They said that the chiefs were to collect their ratio on 16th. He was at the store helped by procurement officer Philip Nzioka who had S14 which chiefs sign on distribution. The chief was to go to him with the voucher at the store to collect the food.
15. It was his testimony that on 16.03.2022, Mr Bethwel Kingele Senior Chief Isinga went to collect his ration at 8.00am and he gave him 42 bags of beans, 21 bags of rice and one carton of corned beef. That he used his own transport, GKA 250Y which is attached to the DCs office went for the food. He stated that he did not know what happened at the location and he identified the accused person. He stated that while in the office, citizens went to complain that the chief had taken food to his office. He referred to the requisition form signed by the accused person.
16. During cross- examination, he stated that he saw two motor vehicles carry the food, one from the office of DCC driven by Charles Mbithi whom he saw once and the OCS, Chief Inspector Munyoki. He stated that Mbithi did not carry three rounds.
17. PW3 Michael Muisyo Kaloki stated that on 15.03.2022 he was in the office of the chief with other village elders and were told to take names of people who were destitute, 10 names from each village which they gave. They were told that food would be distributed on 16.03.2023. They came with people and one lorry came followed by another. He stated that Chief King'ele started distributing food until the food got finished. He stated that the village elders were also given their share. He stated that the next day Leonard Maingi, another chief called him and told him that another portion of food was found but did not tell him where the food was. He stated that Leonard called them as village elders and they were not called another day to distribute the food. He identified the accused person as Chief Isinga.
18. During cross- examination, he stated that the food came from the DO's office and that he was at the chiefs meeting on distribution and was not in the Dos meeting on distribution. He stated that food was distributed at the chief's office and he was present when the food which was in 50kg sacks was brought by the GK. He told the court that all the food was distributed to people and all that was there was given out. He identified Leonard Maingi assistant chief, chief King'ele and Mary Mulwa of Matetani from a photograph.
19. In re-examination he stated that he was not called to the Dos meeting.
20. Upon examination by the court he stated that he was present when the food was brought by the 2nd motor vehicle. That the 1st vehicle went before he arrived and that they were not told the amount.
21. PW4, Philip Kioko Nzioki, stated that on 12.03.2022 food was received from special programed at the DCs office. On 13.03.2022 a meeting was held at the DCs office boardroom, at Kangundo to discuss the modality of distributing food. He stated that he was invited, he is an administrator and the chiefs and religious leaders were present. He stated that as the person in charge of procurement, he was to advise on records, that each sub location was allocated 7 bags of rice and 14 bags of beans. He stated that the food was for the needy and the chiefs were to collect food from the store.
22. It was his testimony that on 16.03.2022, chief Isinga was the 1st to arrive, he called him on phone and Sergeant Tom Morano who was in charge of the store came, they went to him, counted the food and gave him. He stated that he gave him 21 bags of rice and 42 bags of beans as per the number of sub



- locations in the area. He signed a counter requisition and issuance voucher, the accused also signed. He produced the S11 and identified the accused whom he said he had worked with form close to 13 years.
23. During cross- examination, he stated that he worked as a clerical officer and or procurement officer and that the food was for the needy. He stated that it was not his business how the chief was to transport the food as it was beyond his scope of work.
 24. In re examination, he confirmed that he gave 21 bags of beans to Mr. King'ele.
 25. PW5, Onesmus Kyuma Mwangangi stated that on 14.03.2022 at 9.00 am he was called to a meeting as a pastor at the DCs office by DO1 for distribution of relief food. He stated that the chair was DO1 Susan who wanted them to put modalities on how to distribute the food. He stated that four D01s, three chiefs, Sgt Tom and another short brown were present. They were told food was to be distributed immediately and they agreed all sub locations would benefit. Each sub location was to get 7 bags rice and 14 bags rice and 14 beans, that cartons of beef were few and they agreed chiefs be given to distribute. He stated that the meeting ended at 11.00am and chiefs were to talk to their sub chiefs through meetings on how to distribute food on the same date.
 26. He stated that the next day they were to go for food. He was not present when the food was issued. He stated that Sgt Tom was in charge of food and the clerk was in charge of record. DO1 called him to go for his share, two bags of beans and one bag of rice to take to church for distributuib to the special group. He stated that he did not see anyone else when he went for his share, he signed for it and was told to go back after ine week to bring the distribution sheet which he did. He stated that a meeting was held after the exercise and he saw the accused at the meeting before and after distribution.
 27. During cross examination by the accused person, he reiterated that they were given one week to make returns, he stated that he collected the food on 15.03.2022 alone and carried it using a motor vehicle. He did not hear of any report that a store had been broken into. He stated that the food was to be distributed with the needy persons with disability and orphans being given priority and if anything was to remain, other categories were to be considered.
 28. Upon cross examination by the court, he stated that the food was kept at a store in church.
 29. PW6, Mary Njeri Peter, the assistant chief Matetani stated that on 15.03.2022, after receiving information on the location that the chief wanted to meet her and three others, they met at 2.00pm and deliberated on relief food. She stated that her sub location ahs 18 villages and she had to merge some to be enough for everyone. She stated that they left and met the next day and that village elders were to bring a list of names of vulnerable people. She stated that she arrived late, Lenny and Leonard had arrived, village elders were busy trying to add those who they had not captured. First batch of food had arrived via a GK from the office of the DO driven by Mbithi AP. She ws told that 23 bags had been brought by Lenny and Leonard.
 30. She told the court that an hour later, OCS Munyoki brought another batch, she could not tell how many bags he bought. That they divided the beef according to the sub location Isinga Matetani and each person got 2kg rice and 2kg beans, that rice got over and they gave 4kg beans. She stated that all the food was distributed and some did not get food. All the vulnerable people in her list got food. She stated that the senior chief told them to close office and they all left. An hour later she got a call from a media personality asking if senior chief had been arrested to which she said she did not know. Three days later she was told that she was required at DCI office to record statement. She identified the accused and made reference to her food distribution list.
 31. Upon cross examination, she stated that they discussed who was to be given food through the village elder. The center of distribution was senior chief's office. She stated that they did not count the food



- when it arrived. She said there was briefing, prayers and commissioning. She left with the senior chief and did not see him carry any food. She stated that the food was not to be stored, it was to be brought and distributed. She was aware that the senior chief's office had been broken into and he had been attached as well. She stated that it was his choice to keep anything belonging to the office where he felt safe.
32. PW7, Leonard Maingi Senior chief Mulingana Sub location stated that on 15.03.2023 at midday there was a meeting of village elders. He got a message from the chief, they met at his office at 2.00pm, they were required to identify vulnerable person with the help of village elders. He stated that he and assistant chief Isinga were present. The chief was the chair, he said he had 21 bags of rice and 42 bags of beans which were to be distributed the next day. The following day at 9.00am, he got to his office and found people had started coming.
 33. He stated that AP Mbithi brought the 1st batch on a GK and they offloaded 23 bags of beans. Later another motor vehicle came driven by OCS Kangundo Munyoki, he said he was busy elsewhere and did not count the bags. The food was offloaded and placed on the veranda of the senior chief's office, the chief arrived soon thereafter and they organized distribution. Each got 5kg rice and 10kg beans for the elderly. He stated that food was given at 1pm and his list had 124 people that he gave and they distributed there food until it got finished. He stated that at 4pm he got a call from a member of the public who told him chief was arrested with relief food at his home. he did not go there and three days later he was called to record statement.
 34. During cross examination, he stated that in November-December 2021, the chief's office was broken into and there was a time he also suffered injuries. He stated that food was stored at DCC and was given by government. That the chief was accountable to give report on distribution. He stated that he did not know if there was a timeline on distribution.
 35. PW8 was chief inspector Munyoki Moses stated that on 15.03.2022 he was called by assistant chief Mulingana but senior chief Bethwel King'ele talked on the phone requesting for assistance of motor vehicle on 16.03.2022 morning so that he could ferry relief food to his office. He told him that he was busy as he was mandated to ensure officers manning KCPE/KCSE were to be ferried and later he as to appear in court through summons. They agreed that after he finished with his morning assignment, he would call to see if he would be of help.
 36. He stated that at 9am after finishing his morning assignment, he opened his phone and found Senior Chief King'ele had called him severally, he called back and informed him that he was back in the office and they agreed to meet at the DCs office in Kangundo. He said since he could not get his driver PC Kambi, he took the station land cruiser GK 043V, clogged the millage, entered details of his journey to the chief's office and back at 9.40am. He stated that he reached the DCs office and around 5 people including the procurement officer. That several nags of rice 50kgs each and beans reddish in colour, 50kgs were packed into the land cruiser. He carried chief King'ele and a village elder at the front seat and others at the back guarding the food stuff.
 37. It was his testimony that they left the DCs office to chief's office where they met assistant chief Lenny Kilonzo, Mary Njeri Matetani, David Maingi Mulingana and other members of the public, the foodstuff was offloaded at the verandah of the office. That the chief told him that he has gotten assistance from the DCs office who ferried the first batch of food. He said he left and went on with his day's activities than later when he called for the OB is when he came across an entry that senior chief had been arrested by DCI Kangundo with an offence of stealing by servant or stealing by person in a public office. Later DCIO Kangundo called him and told him to release senior chief King'ele on cash



- bail of Kshs 5,000 which he did. He stated that he did not stop anywhere on the road. He positively identified the accused.
38. Upon cross examination, he stated that the chief called him and wanted a lorry from Kakuyuni police station but he told him it was out of jurisdiction and told him he had a land cruiser. He was told that sgt Mbithi had helped carry the 1st lot. He could not confirm the number of bags he carried. He said he found over 100 members of the public. He could recall that sometime back, the chief's office had been broken into and things vandalized including electric cables.
 39. PW9, Lenny Mutie Kilonzo a senior assistant chief Isinga, stated that on 15.02.2022 while at work in Kathithyama , he got a phone call from his supervisor saying he would have an urgent meeting at 2pm at his office. He went and found three other colleagues and they had a meeting on how to distribute the food. They went back to the village to get vulnerable people to get food the next day. He said his 10 villagers brought people and that the food was brought in government vehicles from DC and police. He stated that crowd control was present, work was delegated and village elders helped give food until it got finished at 2pm. They all went home and the next day while at a meeting with coffee farmers at Kilalani, he heard rumours that senior chief had been arrested.
 40. Upon cross examination, he stated that he saw two vehicles land rover 110 and land cruiser from Kangundo Police station and he saw food offloaded. He said that senior chief did not carry any food only sugar cane.
 41. PW10, CPL Erick Githinji stated that on 16.03.2022 he was accompanied to the home of the accused where they were investigating a case of stealing relief food. He stated that he took photographs of the general view of the gate, the compound where there were tyre marks, houses, the door of one of the bedrooms, sacks of beans and rice inside the bedroom and five sacks of food. He stated that he processed them and made print outs that were not altered or interfered.
 42. In cross examination, he stated that they arrived at around midday and he was not aware if the accused had distributed relief food.
 43. In re-examination he stated that the marks on the ground were fresh and visible. It was fresh. That the food was found in one of the children's bedroom
 44. Upon examination by the court, he stated that the accused was present when they went to his home, the officers went ahead of him and he could not tell who opened the door. He said he went through the main door, through the corridor , table room door then children's bedroom.
 45. PW11 , Sgt Denis Mutembei stated that on 16.03.2022, while at DCI office Kangundo, he got information through telephone call from a member of the public that the accused had diverted relief food to his home within his location. He said that they went to his home and found him and his wife and told him the reason for the visit. They informed him that they will search his house which they did and in one bedroom which was not in use, found 5 bags 50kgs, one under the bed and four along the corridor. That the bags had clear labels marked not for sale. Three bags of beans and two bags of rice. He said they inquired from him why the food was in his house and he told them they were there for security reasons meant to be distributed to the assistant chief's village elders and nyumba kumi clusters.
 46. It was his testimony that they took the bags to the sitting room where they were photographed and they drew an inventory of the recovered food. They took the accused and the recovered food to the DCI offices and informed the DCIO and an inquiry was done. He stated that the food was given vide letter ref MPSC.ACA SP/SP/9/VOL/1/ (169) dated 7.3.2012. they found that there was a committee that discussed distribution of food chaired by ACC1 madam Sussy Nyamusi and meant for the vulnerable. Distribution was to be done as per sub location, 7 bags of rice and 14 bags of beans. He stated that in



the process of their investigations, they made a statement of the people who were to benefit and they said they had already received their share of their food from the main distribution.

47. He stated that the accused tried to defend himself by forging minutes of a meeting held in his office and the assistant chiefs and nyumba kumi said there had been no meeting. He stated that they got employment details from DCI's office, an issue voucher S11. He got 21 bags of rice and 42 bags of beans to be distributed. He stated that food was served by two government vehicles with authority. He stated that the accused was not known to him and there was no bad blood.
48. During cross examination, he stated that he was not aware of any complaints against him to IPOA. He stated that Sgt Mbithi was one of the drivers who ferried food whom he did not investigate. He said that there was hearsay that Sgt Mbithi took food to the home of the accused using his vehicle and no one came out clearly to say it was Sgt Mbithi. He was aware that the office of the chief had been broken onto and things stolen. He stated that he was not in the meeting of 15th, that there was no agreement for any food to be set aside for later distribution. He said that his informer saw the accused steal food.
49. In reexamination, he stated that distribution was to be done at the chief's office and that is where it was delivered.
50. PW12, PC Boaz Laboso attached at DCI Kangundo stated that that on 16.03.2022 at 1pm he was at work when he got information from DCIO and Sgt Mutembei that they got information that the accused had stolen relief food and hidden in his house. he stated that he, Sgt Mutembei, PC Simiyu, PC Nyambu, PC Mwanjiki and an insurer from CSI went to the home of chief at Isinga, they knocked the gate and it was opened by the accused. He saw the tyre impression of the motor vehicle. He stated that it was true that he had food which he kept in his house which they found and it was written 'GOK not for sale'. That one sack was under the bed, four between the beds . they were 2 bags of rice and 3 bags of beans 50kg each. He stated that they were photographed by the CSI officer,
51. He stated that they asked the chief why the food was at his house and he said he kept it to distribute it later to his assistant chiefs, nyumba kumi and village elders. He told them that he was given food to give to the needy. He said he had a distribution list which he gave them.
52. He told the court that that they recorded his statement under inquiry and wrote a report vide OB 30/6/2/22 ,preferred charges and he was released on a cash bail of 5,000. He said he wrote statements of witnesses, 3 assistant chiefs, headmen and village elders. The assistant chiefs told him all the food was distributed. He wrote a letter to the sub county DCC asking for a letter from Ministry of Public service showing that Kangundo sub county had received some food. He produced the counter requisition and issue voucher. He said that the chief used GKs to ferry the food, GK A043V Toyota land cruiser driven by OCS and GK 1250Y driven by retired police driver Mbithi . He said the charges were not fabricated and there were grudges. He produced the following;
 - a. Minutes dated 15.03.2022
 - b. Inventory
 - c. Accused forged minutes
 - d. Appointment/transfer letter
 - e. Distribution form lists
 - f. Police driver permit
 - g. Daily work ticket



- h. DCI Kangundo inquiry 2/2022
 - i. ODPP inquiry file
 - j. Rough sketch map
53. Upon Cross examination, he stated that he was not there on 15.03.2022 when the accused had a meeting with the assistant chiefs. They did not sign it. he stated that the accused decided to distribute food at his office instead of giving the assistant chiefs. The rumour was that some did not get food and assistant chiefs complained the portion they got was little but they did not tell the court. He stated that they got information that the government vehicle, a land cruiser took the food there. He told the court that the informer did not record a statement, that they did not get evidence linking him directly to the offence. He stated that the food was intact and the accused told them the reason he kept the food in his house.
54. In re examination, he stated that the food was taken to the chief's office to be distributed by assistant chiefs. He stated that the accused's home is 2-3kms away from his office.

Trial Court Judgment

55. After the close of the prosecution case, the Trial Court found that the prosecution had not established a prima facie case and acquitted the accused person under section 210 of the Criminal procedure code vide a ruling dated 25.05.2023.

The Appeal

56. Dissatisfied by this decision, the Appellant filed a Petition of Appeal seeking to have the ruling set aside and substituted with an order that the accused person be placed on his defence on the grounds that;
- a. The learned Magistrate erred in law in acquitting the Respondent under section 210 of the Criminal Procedure Code of the offence against the overwhelming evidence put across by the prosecution.
 - b. The learned Magistrate erred in law and in fact by failing to note that the evidence adduced by the prosecution witnesses was well corroborated
 - c. The learned Magistrate erred in law and in fact by failing to consider the prosecution evidence in totality
 - d. The learned Magistrate erred in law and in fact by not considering that the relief food was found in the respondent's house
 - e. The learned Magistrate erred in law and in fact in finding that the prosecution failed to prove the charges preferred against the accused beyond any reasonable doubt.

Submissions

57. The appeal was canvassed by way of written submissions.
58. The Appellant did not file submissions.
59. The Respondent filed submissions on 25.09.2024 and submitted that there was no evidence of stealing tabled by any prosecution witness, that what was on record was that the Respondent was tasked with the distribution of the relief food and he had to find means to transport the same to the areas of convenience for distribution. He was to make arrangements for storage of the said relief food and was



to further make arrangements on the location of the distribution centers including the manner and mode of distribution. That PW2 and PW4 confirmed that the Respondent was given relief food.

60. It was submitted that the Respondent did not break any warehouse or storage facility and did not make away with the relief food without authorization. He was procedurally issued with it and signed form S11 as had been required of him. Further, that the prosecution witnesses testified that the relief food was distributed to the members of the public. It was contended that PW1 told the court how the Respondent was lawfully issued with the food, that she stated that;

“she called the chief to confirm the allegations to which he told her that he had made arrangement with the local committee to take the food in his home”

61. While relying on the case of *Ramanlal Trambaklal Bhatt v R* [1957] EA. 332 at 334 and 335, it was submitted that the legal onus is on the prosecution to prove its case beyond reasonable doubt. The court was urged to dismiss the appeal and not use judicial time for an academic exercise.

Determination

62. I have considered the Petition of Appeal, Trial court record and the submissions and find that the issue for determination is whether the prosecution established a prima facie case so as to place the Respondent on his defence.

63. The duty of this court as a court where the first appeal has been filed was elucidated in the case of *Jonas Akuno O'kubasu v Republic* [2000] eKLR where the court stated that:

“It is correct that on first appeal the appellant is entitled to have the appellate court’s own consideration and view of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the material before the judge or magistrate with such other material as it may decide to admit. The appellate court must make up its own mind not disregarding the judgement appealed from but carefully weighing and considering .”

64. I have re evaluated the evidence before the Trial Court and it is not in dispute that the Respondent was a senior chief working at Isinga Location. It is not in dispute that relief food was received on 12.03.2022 and after a meeting that was held on 15.03.2022 to discuss distribution of food between the heads of department, ACCs, Chiefs and assistant chiefs, the committee decided that the food would be distributed as per sub-locations. It is also not contested that the food received in this particular location came in two rounds carried by two motor vehicles; GK A043V Toyota land cruiser driven by OCS and GK 1250Y driven by retired police driver Mbithi. According to PW3, PW5, PW6, PW7, PW9 all the food that was delivered was distributed. It is also not disputed that 2 bags of rice and 3 bags of beans each weighing 50kg was found at the Respondents house.

65. The Respondent was charged with stealing by person employed in public service contrary to section 280 of the *Penal Code* which provides that;

“If the offender is a person employed in the public service and the thing stolen is the property of the Government, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years.”



66. In the case of *Ronald Nyaga Kiura v Republic* [2018] KEHC 5030 (KLR), the court overturned a finding of ‘no case to answer’ after considering the trial court’s reasons for its finding and held that;

“It is important to note that at the close of prosecution, what is required in law at stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebutted is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat v. Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concerned itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

67. From the evidence presented, the Respondent contends that he did not steal the bags of rice and beans and had only kept them in his house for further distribution. The only way the court can consider this evidence is if the Respondent has his day in court.

68. As regards the alternative charge, it would be in the interest of fairness for the Respondent to explain his side of this story and produce any evidence in support or against the allegations. I note that during the proceedings the Respondent intimated production of documents but that can only be done during the defence hearing.

69. In the case of in the case of *Ramanlal Trambaklal Bhatt v R* (1957) EA 332 at 335, the court stated as follows:

“Remembering that the legal onus is always on the Prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution’s case, the case is merely one in ‘which on full consideration might possible be thought sufficient to sustain a conviction’. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather, hopes the defence will fill the gaps in the Prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is ‘some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence’. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It may not be easy to define what is meant by a, “prima facie case”, but at least it must mean one on which a reasonable man, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

70. This Court finds that a prima facie case has been established against the Respondent and therefore the appeal succeeds.

71. Without going into the merits of the case, I order as follows;

- a. The order of the Trial Court acquitting the respondent is hereby set aside;
- b. The Respondent is hereby found to have a case to answer;
- c. Kangundo Chief Magistrate’s Court Criminal Case No.798 of 2022 to be placed before a different Magistrate for the defense hearing and final determination.



**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT ON 28/11/2024 AT
MACHAKOS HIGH COURT. (VIRTUAL CONFERENCE.**

M.W.MUIGAI

JUDGE

