



REPUBLIC OF KENYA



KENYA LAW
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**Ngaruiya v Republic (Civil Appeal E018 of 2021)
[2022] KEHC 11319 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E018 OF 2021**

GMA DULU, J

MAY 31, 2022

BETWEEN

JOHN MUTHIORA NGARUIYA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence of Hon.
A. Ndungu in Makindu Senior Principal Magistrate's Court
Criminal Case No.106 of 2019 pronounced on 30th September 2020)*

JUDGMENT

1. The appellant was charged in the magistrate's court with giving false information to a person employed in the public service contrary to section 129(a) of the *Penal Code*. The particulars of offence were that on January 28, 2019 at Kibwezi police station in Kibwezi Sub-County within Makueni County informed No 232014 Mr Godfrey Nderitu ASP Sub-County Police Commander, a person employed in the Public Service as a Police officer that Samuel Irungu Muchiri was in possession of an AK 47 rifle with ammunition, information he knew or believed to be false intending thereby to cause the said No 232014 Mr Godfrey Nderitu ASP Sub-County Police Commander to arrest Samuel Irungu Muchiri which he ought not to have done.
2. He denied the charge. After a full trial, he was convicted of the offence and sentenced to one year imprisonment.
3. Dissatisfied with the conviction and sentence, the appellant has come to this court on appeal on the following grounds –
 - 1) That no proper evidence was tendered before the court to warrant his conviction.
 - 2) That the prosecution did not prove their case beyond reasonable doubt.



- 3) That the findings of the magistrate was not related to the evidence on record.
 - 4) That the trial court did not consider his defence.
 - 5) That the magistrate erred by rejecting the evidence of PW4 Jones Mutisya Muema, the landlord of Chania Hotel Sultan Hamud.
 - 6) That the prosecution violated his constitutional rights under article 40(1)(a)(b) of the [Constitution of Kenya 2010](#) by denying him his property (money).
4. The appeal was canvassed through filing of written submissions. In this regard, I have considered the submissions filed by the appellant and those filed by the Director of Public Prosecutions.
 5. This is a first appeal. As a first appellate court, I am expected and required to evaluate all the evidence on record afresh and come to my own independent conclusions and inferences – see *Okeno v Republic* (1972) EA 32.
 6. In proving their case, the prosecution called 5 witnesses. PW1 was Godfrey Nderitu ASP whose evidence was that he was attached to Kibwezi Sub-County Police Division Headquarters and that on January 28, 2019 he was informed that a person wanted to talk to him. That person was John Muthiora Ngaruiya who informed him that he knew the perpetrator of a murder at Kambu. Muthiora then said that he was from Salgaa Elburgon and that when he went to buy meat, the newspaper in which the meat was packed had that story. He also said that he had been working at Emali Township – Chania hotel where he overheard the murder being planned. Muthiora named his employer called Muchiri as the culprit of the murder, and that the weapon used was a gun (AK 47). It was Nderitu’s evidence that when the witness called Muchiri, he came to the station and confirmed that he had previously employed Muthiora and that the two were previously prisoners at Kamiti prison and that Muchiri also said that Muthiora was not happy because he was sacked without being paid. The witness then called DCI officers Mtito Andei who were investigating Kambu murder and informed them about the report.
 7. PW2 was Samuel Irungu Muchiri, who conducted transport business and operated Chania Hotel at Sultan Hamud. It was his evidence that on January 29, 2019 at 11am, he received a phone call from DCI Kibwezi to go there. He passed by Sultan Hamud Police Station and the DCI there phoned and told him that indeed, he was needed at Kibwezi DCI. It was his evidence that on arrival at DCI Kibwezi, he was informed about the report

that he possessed the gun that had been used in killing a teacher. He told the police that he had a letter from police at Nakuru arising from a report made there by the same Muthiora that he kept fugitives. It was his evidence that Muthiora was his employee for a short period of nine days, but because he received information that he was stealing from the shop, he sacked him, and paid him Kshs 2,700/= but as he left he threatened to show him.
 8. PW3 Karanja Karunye of Sultan Hamud testified that he operated a butchery at Sultan Hamud and that in August 2018, Muchiri and his brother approached him to buy his kiosk. They were connected to him by his brother called Mr Matoke. They however did not agree on the sale price as he offered to sell the kiosk at Kshs 300,000/= and they wanted to pay only Kshs 250,000/=. According to him Muchiri’s brother was the buyer and was a teacher in Taita Taveta. It was his further evidence that in January 2019 he talked to Jones Mutisya who informed him that Muchiri who had rented his premises, was looking for a person who could supply him with beef. The witness then informed Jones that he could connect Muchiri to a person who sold goat meat.
 9. It was his evidence that he formed a habit of eating at Muchiri’s hotel and in the process twice met a worker in that hotel who dressed like Akorino. Later, he was told that Muchiri had been arrested by



police with the Akorino man and taken to Nakuru. Later still, in February, he learnt that Muchiri had been arrested again by police from Kibwezi. He identified the appellant as the person he saw washing utensils at Muchiri's hotel.

10. PW4 was Jones Muema Mutisya whose evidence was that Muchiri rented his hotel in April 2018. He said that he did not know the appellant but saw him at the hotel at least twice.
11. PW5 was Sgt John Edonoi of DCIO Mtito Andei, and the Investigating Officer. It was his evidence that on January 28, 2019 together with other police officers, he proceeded to Kibwezi police station where they found the appellant being interrogated by police. They joined SPT Nderitu and CIP Nderitu in the investigations, and later charged the appellant with the offence.
12. When put on his defence, the appellant tendered sworn testimony. It was his evidence that on January 28, 2019 at 11:30am he was at Mtito Andei township with Pw2, PW3, and PW4, who were going to show him two plots for sale. He paid Kshs 2 million from Kshs 3,500,000/= he had obtained by selling a plot at Elburgon. Then PW3 and Pw4 escorted him in a Probox vehicle to KCB Bank to deposit the balance of Kshs 1,500,000/=. Before reaching the bank however, PW4 struggled with him and Pw3 demanded that he should throw the paperbag with the money in the back seat. He managed to escape and went to report the incident at Kibwezi police station. With the police, they tried to trace PW2 at Sultan Hamud and

later found him drunk in a bar, but he denied knowing him. According to him, his report was later twisted by the police, who told him to choose between death or being charged, and he accepted to be charged.
13. From the record, it is quite clear to me from both the prosecution and defence evidence that Godfrey Nderitu ASP was a person employed in the public service, thus a police officer when the offence was allegedly committed. He was attached to Kibwezi police station. Thus the first element of the offence was proved.
14. The second element of the offence was whether the appellant gave him information as such police officer. The prosecution says so, while the appellant on his part, says he gave information to the police officer, but on the theft of his money. Thus there is no doubt that the appellant gave information to the police officer that day, but the only dispute is with regard to the content of the information. The second element of the offence was thus proved.
15. The third issue is whether the information was false and meant to mislead the police officer. The appellant himself does not say that such information was true. He claims to have given different information to the police. On my part having considered the evidence for the prosecution and the defence, I have no hesitation in finding that the information was false and meant to mislead the police officer. I find the defence of the appellant claiming that he gave a report about his lost money to be an afterthought.
16. In my view therefore the prosecution proved beyond any reasonable doubt all the elements of the offence. The conviction will be sustained.
17. With regard to the sentence imposed, it is a lawful sentence.
18. Consequently, and for the above reasons, I dismiss the appeal and uphold both the conviction and sentence of the trial court.

Right of appeal explained.



**DELIVERED, SIGNED & DATED THIS 31ST DAY OF MAY, 2022, IN OPEN COURT AT
MAKUENI.**

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GEORGE DULU

JUDGE

