



**REPUBLIC OF KENYA**

**IN THE CHIEF MAGISTRATES COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**ANTI-CORRUPTION CASE NO 27 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VS**

**DENNIS PAUL MANOTI..... ACCUSED**

**JUDGMENT**

**Dennis Paul Manoti**, (Hereinafter 'the Accused') is charged with three Counts all under Section 39(3) (a) as read with Section 48 of the Anti-Corruption and Economic Crimes Act-No 3 of 2003 (Hereinafter 'the ACECA')

The whole of Section 39 of the ACECA however has since been repealed by Section 23 the Bribery Act- No. 47 of 2016. The Act created similar offences under Section 6 with somewhat different elements and whose punishment is much more enhanced.

Further Section 27 of the Act is a transition provision and provides as follows

**27. Pending bribery cases**

*(1) This section applies with respect to bribery offences or suspected bribery offences under the Anti-corruption and Economic Crimes Act 2003.*

*(2) Any investigation or prosecution or court proceedings instituted before the commencement of this Act based on an offence under this Act shall, with the necessary modifications, be treated or continued as if they were instituted under this Act.*

The Bribery Act came into force on 13/1/2017 when the instant charges had already been commenced and therefore in terms of the above provision, and to the extent that it is legally permissible, this trial is deemed to have continued as if the charges against the Accused were, with necessary modifications, initiated under the Act.

Count 1 and 2 are both charges of corruptly soliciting for a benefit.

Particulars to Count 1 are that on the 28<sup>th</sup> day of November 2016, at City Hall within Nairobi County, being a person employed by a public body, to wit, Nairobi County Government, as an Accountant III, Rates Section, corruptly solicited for a benefit of Ksh 6,000,000/- from Ramesh Chadra Govin, as an inducement so as to facilitate transfer changes on LR No. 20273 from Sigma Limited to Taj Mall Limited, a matter relating to the affairs of the said public body.

Particulars to Count 2 mirror those in Count 1 save that the amount allegedly solicited is ksh. 500,000/-

In Count III, the Accused is charged with the offence of corruptly receiving a benefit.

Particulars in support of this Count are that on the 29<sup>th</sup> day of November 2016, at Ankara Hotel within Nairobi County, the Accused being a person employed by a public body, to wit, Nairobi County Government, as an Accountant III, Rates Section, corruptly received a benefit of Ksh 100,000/- from Peter Kebaso, as an inducement so as to facilitate transfer changes on LR No. 20273 from Sigma Limited to Taj Mall Limited, a matter relating to the affairs of the said public body.

The Accused denied all charges at plea on 8/12/2016 and a trial ensued before this Court in which the Prosecution called a total of eight witnesses and produced around eighteen pieces of documentary exhibits in support of the charge.

In my Ruling at the case to answer stage on 21/7/2020 I acquitted the Accused in Count 2 under Section 210 CPC and called him to his defence in Counts 1 and 3.

From the submissions on behalf of both the State and the Accused I have however noted with a bit of surprise, the indication that the Accused was acquitted in Count 1 and called to defend himself in Counts 2 and 3, which is not the case. I am unable to comprehend where the confusion came from as the ruling on record is clear about the matter. I assume that this is out of inadvertence but still surprised that it happened at both ends!

In his defence, the Accused gave sworn evidence and produced documentary exhibits.

He did not call any witnesses.

At close of hearing, Ms Olajo on behalf of the State and Mr Mong'eri for the Accused filed written final submissions in which they also adopt previous submissions and annexed authorities filed at the case to answer stage.

I note from Mr Mong'eri's submissions that the question of whether or not there was compliance with Section 35 of the ACECA in the investigation of this case is repeated, having been earlier raised and addressed in my ruling at the case to answer stage. I do not find it necessary to repeat the holding in relation to the issue in this judgment. Suffice it to say that I rejected the submission for reasons given in the ruling.

The Complainant in this matter Ramesh Chandra Govin (PW 1) testified that he is a businessman and the proprietor of a shopping mall known as Taj Mall Limited that was based (at the time) in Embakasi area of Nairobi.

His further testimony is that his said company was the owner by purchase of land reference No. 20273 located at Kiang'ombe area, also within Nairobi, from one Evans Obongo Matunda and for which it had been paying land rates at the Nairobi County government until 2015.

That around 2015, he had difficulties obtaining a rates demand note from Land Rates Department at City Hall, and paying rates for the property, and decided to engage a private investigation firm known as Land Force Security to follow up. That eventually, through one- Peter (Peter Kebaso Onkangi- PW 7), he obtained a demand note that however, had the name of a different company- Sigma Limited as plot owner.

He continued in testimony that he requested Peter to find a way of rectifying the problem and that Peter told him that he had approached one Manoti, (the Accused), who had demanded for a bribe of ksh 10,000,000/-, which they had negotiated downwards to Ksh. 6,000,000/-million.

He further continued that he decided to make a complaint at the Ethics and Anti-Corruption Commission (*hereinafter 'EACC'*) where he recorded a statement, and Peter was given a recording gadget, with which they went to Mr Manoti's Office, and Peter recorded their conversation.

He further testified as follows;

*'... I can confirm that he made a demand of Kenya shillings 6 million of which he required Kenya shillings 500,000 deposit. He required the money so that he could rectify the problem with our rates...'*

He concluded his testimony by stating that he later learnt from Peter that the accused had been arrested, and went to confirm it at the EACC offices where he found him.

Under cross examination, by Mr Mong'eri following a recall, because he had testified initially in the absence of then counsel for the Accused, the complainant stated *inter alia* that he was present when money was discussed.

Under re-examination, he maintained that he met with the accused in the Accused's office.

Peter Kebaso Onkonga (PW 7) confirmed in testimony that his company Land Force Security, where he was the Managing Director, was given a contract by the complainant to investigate why the complainant who had been paying land rates on his purchased plot for a while, was no longer getting land rates statements and why he had eventually received a rates statement in which a company known as 'Sigma' was shown as plot owner.

His further testimony went as follows:

That he went to City Hall where he met one John, who in turn introduced him to an officer in the rates department known as Manoti.

He spoke to Manoti who told him that the system was closed but he had a way to access it, and that he should speak to his client to 'support' by paying some money to enable the change of names. He stated further as follows;

*'... He asked for 10 million but I told him that that was a lot. He told me that he could pay 6 million. He told me that my client could*

*first pay half of the amount together with a cheque of the pending rates amount...'*

When he informed his client (the complainant) what the accused told him, his client told him that the payment of Ksh. 6 million was illegal and that the cost of the land itself had been Ksh. 8 million. They then agreed to report the matter at EACC offices, which they did on 28/11/2016.

The following day he had an appointment with the accused and returned to EACC offices where he was given a recording device. He returned with the device to the accused's office where he recorded their conversation in which the Accused reiterated his earlier demand.

He returned the recording to EACC offices, where it was played and the demand confirmed. EACC officers then planned an operation in which they gave him Ksh 100,000/- which was treated, inside a khaki envelope, and he accompanied them to City Hall where he was to meet the accused.

At City Hall, he left them outside the building, went inside and met the accused, having already informed him that he had the required money, and that the accused told him he could not receive the money in the office and they proceeded to a hotel near City Hall, called Ankara.

That inside the hotel which was full, he saw one of the EACC Officers who was however unknown to the Accused. They found space next to the said officer, sat and ordered tea. He testified further follows;

*'... He asked for the money and the cheque. I told him I had both. He then received the money inside the envelope. He opened it and counted the money. He found it was Kenya shillings 100,000. He put the money in his right pocket. EACC officers came in and arrested Mr Manoti...'*

He identified a cheque leaf for ksh 214,250/- (Pros Exh 7) as the one had been given by the complainant take to the accused. He also identified an inventory for the cheque (Pros Exh 8). He was shown Pros Exh 3- An audio recording transcript and confirmed that it was the original transcript of his recorded conversation with the accused, and identified his signature. He was also shown Pros Exh 14- An Inventory- and confirmed that it had his signature. He was shown Pros Exh 9- a wad of currency notes, and confirmed that it was the money he was given.

The audio recording was played to him and he confirmed that the conversation in the recording was between him, Mr Ramesh (the complainant) and the accused and further that the accused demanded for Ksh 6 million and a deposit of Ksh 500,000/-.

Under cross- examination, he denied that the complainant had told him to talk about money, and stated that it is the accused who introduced the issue of money. He confirmed that no recording was made at Ankara hotel. He maintained that the accused told him that he would receive the money in the hotel and not in the office. He agreed that Ankara hotel had CCTV cameras but he had not been shown any such footage in court. He stated that he was not present when the audio was transcribed adding that he was not there to identify the voices. He was referred to the transcript at line 11 from the bottom and the subsequent lines and agreed that there was no mention of 500,000 shillings. He was further referred to page 6 of the transcript and stated that he could see the term 'six million' and 'Hapana teremka ifike five' but there was no indication of money. He agreed that he mentioned 'ng'ombe' in the transcript but denied that they were talking about cows. He agreed that the accused had not asked him for Kenya shillings 100,000. He denied that the intention was to trap the accused. He maintained that the accused had demanded for ksh 500,000/-but not ksh. 100,000/-. He stated further follows;

*'... The money was in an envelope. I put it in my left pocket from EACC officers...'*

He agreed that when he pocketed it he had no gloves. He also agreed that he greeted the accused in the office. He stated further follows;

*'... I gave him the money in the envelope. He received both. He counted the money and put it in his left coat pocket. He had a black coat with stripes...'*

He further stated that he was present when EACC officers recovered the money. He identified Pros Exh 6 as the inventory for recovery of the money. He agreed that although his name was on the document he had not signed it. He also stated that the accused was present. He could not see his signature on the document though. He stated as follows in relation to the cheque;

*'... I was given on the same morning of 29/11/2016. I gave it the same day. It was not in the same envelope...'*

He stated as follows in relation to the recovery of the money;

*'... EACC officers did not remove the money from the pocket. The accused removed it from the pockets. I do not recall where he put it. It is a long time ago...'*

Under re-examination, he maintained that in the conversation they spoke about money not cows. He stated that he received the money from EACC in a khaki envelope and did not touch it.

James Wachira (PW 7) who is the investigator herein testified that he was assigned a complaint to investigate on 28/11/2016 and met the complainant and Peter (PW 6). He confirmed from the complainant that Peter a private investigator, had been assigned to investigate a matter relating to the complainant's plot at Kiang'ombe whose rates account had been closed and that a bribe demand for ksh 10 million had been

made, which had reduced to ksh. 6 million.

That he inducted Peter on the use of an Audio Recorder -Pros Exh 17 which Peter had used to record a conversation with the Accused, and which he analyzed. He learnt that Peter was scheduled to meet the Accused the next day 29/11/2016 at City Hall and prepared an arrest operation team comprising himself, Shehe Bakari (PW 3) and Abdi Osman (not a witness).

He also requested Ms Pauline Munyi (PW 4) to treat, inventory and photocopy ksh 100,000/- for the operation.

The operation was mounted in which he alongside the said officers, accompanied Peter to City Hall where he saw him depart and proceed with the Accused to nearby Ankara Hotel followed from behind by EACC Officer Osman Abdi.

His testimony further went as follows;

That Osman Abdi thereafter beeped him from inside the hotel and he joined him where they approached and introduced themselves to the suspect. He further stated as follows;

*'... The suspect removed the money from his coat pocket and dropped it on the ground. I wore a pair of clean gloves and picked the money. My colleague Mr Shehe Bakari swabbed the suspect and I prepared the recovery inventory...'*

That they proceeded with the suspect to their offices at Integrity Centre, where he recovered the coat that the suspect wore ( Pros Exh 11(c) and where Abdi Osman recovered a Diamond Trust Bank (DTB) Cheque leaf dated 29/11/2016 for ksh 214,250/-. He identified and produced the cheque as Pros Exh7 and its inventory as Pros Exh 8. He further identified and produced the Inventory of the coat as Pros Exh 18.

He identified and produced Pros Exh 3 as the transcript of the recorded conversation and stated as follows in relation to it;

*'... I then prepared the transcript of the recorded conversation and invited Mr Kebasu on 23/12/2016 to verify the same. He compared the transcript against the recorded conversation and verified it...'*

He identified and produced Pros Exh 14 as inventory of the trap money prepared by Ms Pauline Munyi.

That he invited one Mureithi (Peter Murimi Mureithi-PW 2) who worked with the suspect and who recognized the voice of the suspect and signed a certificate of voice recognition- Pros Exh 4.

Finally he testified that he transferred the recorded conversation to a computer and recorded it into a compact disc- which he identified and produced as pros Exh 15. In relation to these, he prepared a certificate under section 106(B) (4) of the Evidence Act (Cap 80) which he identified and produced as Pros Exh 16.

Under cross examination, he was referred to his said certificate (Pros Exh 16) and agreed that he had not provided a serial number for the gadget. He was referred to the statement of PW 2 and agreed that the witness had stated that much of the recording he listened to was not recognisable. He maintained that Peter was present when he was transcribing adding as follows;

*'... I called him to compare the recording and the transcript. I called him to identify the voices before I started transcribing. He's the one who identified the voices...'*

He was referred to Pros Exh 3 and agreed that it only referred to 'six million' and not money. He agreed that he had no conversation for ksh 500,000/-. He agreed that the accused had not signed the inventory Pros Exh 18 but stated that the accused indicated he would not sign in the absence of his legal counsel. He admitted that this was not shown on the document. He maintained that he recovered the money from the ground. He stated that during the recovery the complainant and Peter were present but had not signed, neither had the accused. He stated that he could not tell from which pocket the suspect had removed the money. He maintained that it was possible for the chemical to be found in other pockets even though he had referred only to one pocket and one hand. He stated that he did not see the accused put his hand in the other pockets. He agreed that the accused had not demanded ksh 100,000. He denied that the intention was to trap the accused. He agreed that he did not see the complainant hand over the money. He agreed that there were CCTV cameras at Ankara hotel but he did not view them.

The evidence by the complainant, Peter Kebasu and the investigator is confirmed variously in the versions of Peter Murimi Mureithi (PW 2) Shehe Bakari (PW3), Pauline Munyi (PW4) and Denis Owino Onyango (PW5).

Shehe Bakari confirms that he was present at the scene of the arrest operation at Ankara hotel. He further confirms that he did a swab of the Accused's left and right hand at the scene. He identified Pros Exh 5(a) and 5(b) as the envelopes with the swabs that he did. He testified as follows;

*'... We introduced ourselves and informed the suspect that he was under arrest for receiving a bribe. At the same time, the suspect tactfully removed money from his coat pocket and threw it on the floor...'*

He also confirmed that his signature was on the recovery inventory (Pros Exh 6) and that it was prepared by the investigator Mr Wachira.

Under cross- examination, he agreed that he was not there when the accused received the money. He maintained that when the money was recovered it was not inside an envelope. He maintained that Mr Wachira recovered it from the floor. He stated that he was there when the accused removed the money and threw it on the floor. He agreed that if he had touched the money, his hands would have the chemical.

Under re-examination, he maintained that he saw the accused remove the money from his coat and throw it down.

Pauline Munyi confirmed that she treated ksh. 100,000/ in ksh 1000 denominations for the operation and gave it to the complainant in an A5 envelope. She identified the photocopies she made of it as (Pros Exh 10). She testified that she treated the money with APQ Chemical and that she instructed the complainant not to touch it until a further demand was made by the suspect. She confirmed that that she made an inventory of the money.

Government Analyst- Denis Owino Onyango testified and produced his report (Pros Exh 13) which shows that traces of APQ Chemical were found on all the exhibits forwarded to him for analysis. His report states that APQ Chemical was found on both the right and left hand swabs, on the operation money, and on the right and left inner pocket, left upper and left lower pocket of a grey coat submitted for analysis.

The Accused's boss at the Land Rates Department Peter Murimi Mureithi (PW2) testified that the he was Chief Accountant at the Department where the Accused was his deputy.

He confirmed that EACC officers went to his office with a recording gadget and informed him that the Accused had solicited for money. He learnt that the matter involved name change relating to property owned by Taj Mall Limited, adding that his department was not at the time concerned with change of names, but had previously been.

According to him, the recording gadget did not work in his office, and he went to the EACC offices where he listened to the recording. He testified as follows;

*'... The recording was very bad. It is only a small portion that I heard (sic) a voice that sounded like Manoti...'*

He was shown a certificate of voice identification/recognition (Pros Exh 4) and confirmed that he had signed it. He stated as follows in relation to it;

*'... It is signed by myself. I stated that I recognised the voice. As I have stated, I recognised only a very small portion...'*

He then identified the accused as the person whose voice he identified.

Under cross- examination, he stated that his working relationship with the accused was very harmonious. He confirmed that they used to communicate orally. He maintained that the recording was very poor. He was shown Pros Exh 4 and stated that it was not true that he had recognised the entire voice.

Under re-examination, he reiterated his evidence that he had been able to recognise some words. He further stated that he had worked with the accused for about a year. He maintained that their working relationship was harmonious.

In his sworn defence, the accused confirmed that he was the Deputy Chief Accountant at the Nairobi City Council Rates Department. His duties included amongst others, issuing rates demand notices. His department was not charged with land transfers.

He recalled dealing severally in his office with one John Aura who according to him had first gone there and told him that he had been sent to collect a rates demand notice in relation to property land reference number 20273.

I note that the said John Aura was not a witness in this trial and therefore statements attributed to him amount to hearsay and have no value in this trial. I do not include them as part of the evidence.

His further testimony is as follows;

That from his interaction with the said John Aura, he generated a bill/demand note (Defence Exh 5) for the amount of ksh. 214,250/- , a document with transfer requirements (Pros Exh 6) and handled a letter addressed to his boss- Defence Exh 7, He stated that he made Defences Exh 6 as part of 'advice' on tranfers that his department could still do.

John Aura introduced Peter when they went together to his office and that Peter returned later alone and told him that his boss wanted to make a transfer. Further that Peter also asked for a demand note, which he gave him.

Peter called him in the evening of the same day and told them that his boss, wanted to go to his office, which he agreed to because it was a public office. That Peter thereafter went to his office with a man of Asian origin and he explained to them that transfers were not done in his office.

That the next day, Peter again went to his office and offered to buy him tea at Ankara hotel, which he accepted. Further that while they were at the hotel, Peter spoke on the phone, and told him that he had been called back to the office, and offered to leave him with the cheque- (sic) whose copy he identified and produced as Defence Exh 8. His testimony next went as follows;

*‘... As he removed the cheque, he also removed a brown envelope which he had also tried to give me. The envelope had money. I did not understand why he was giving me the envelope. We had not discussed money. I refused to take it and he threw it at me and it fell on the floor. That is also when two men came to me and said they were EACC officers and arrested me. I wish to say I did not receive the envelope. Mr Kebasu greeted me. He had removed the cheque from the envelope before giving it to me...’*

He identified Pros Exh 6, 8, and 18 – all inventories and stated that he had not signed them. He also stated;

*‘...Mr Kebasu physically greeted me. The government chemist confirmed that my hands had APQ. I would say that there are high chances that I got the chemical when he greeted me or when I took the cheque which was in the envelope...’*

He identified letters between the Chief Valuer and Taj Mall Limited including Defence Exh 9, 10 and 11, and stated as follows in relation to the letters;

*‘... From these letters, it is shown that after I dealt with the issue of rates, the issue of transfer was taken by the office of the Chief Valuer. My office never dealt with transfers...’*

He was referred to Pros Exh 3- an Audio Transcript and stated;

*‘... This is a transcript of a recording. There is no place where I demanded for Ksh 500,000. The investigating officer confirmed this. I never demanded nor received Ksh 100,000. The money was on the ground as the investigating officer stated...’*

He was shown Pros Exh 4- a certificate of voice identification/recognition and stated that there was no confirmation of who the identifier was. He also stated that the identifier did not say that he was identifying his voice. He further stated as follows;

*‘... Our working relationship was not that good because they were trying to block me from getting into that that office...’*

He concluded his testimony by stating that he did not demand or receive the money alleged, adding that the case had ruined his life.

Under cross- examination, he agreed that part of his duties was issuing rates demand notices. He stated that he had dealt with Peter three or four times, and that it was on the third time- on 29/11/2-16 when he had asked him to join him for tea-. He maintained that Peter went with a cheque for ksh 214,250/- which he received, adding as follows;

*‘... He gave me the cheque while we were in the hotel to pay for him. He was to come for the receipt later. I refused the money and he threw it on the floor. I did not ask him for the money...’*

He was shown correspondence that he had earlier identified and produced- Defence Exh 8, 9, and 10 and conceded that he was not in the office when the letters were written. He explained that he requested for them from the Chief Valuer’s office.

Finally, he maintained that he was not in good terms with the person who identified his voice adding as follows;

*‘... It came out in cross examination that our working relationship was not good...’*

I have carefully considered the two versions from the foregoing evidence alongside submissions by Counsel.

It is trite law that the State bears the burden of proving its case beyond all reasonable doubt.

What this means is clearly explained in the words of Lord Denning in the case of *Miller v Minister of Pensions (1947) 2ALLER 372* and 373 as follows;

***‘...That degree is well settled. It need not reach certainty but it must carry a huge degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community of it admitted fanciful possibilities to defeat the course of justice. If the evidence is so strong against a man as to leave a remote possibility in his favour which can be dismissed by a sentence of course, it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short will suffice..’***

Some matters are clear from the foregoing evidence.

As Deputy Chief Accountant at City Hall, the Accused was a public officer and an ‘agent’ of his employer, which was his ‘principal’ for purposes of section 38 of the ACECA. In terms of the Bribery Act, his functions as a public officer were ‘a relevant function or activity’ for purposes of the offence under section 6 of the Act as defined in section 7 of the same.

It is established that there was an issue relating to the rates account of the complainant’s property land reference No. 20273, which account had in fact been inexplicably suspended and, of which, ownership details had also mysteriously changed to ‘Sigma Limited’.

The complainant had engaged the services of Peter’s Company known as Land Force Security to ascertain what happened on his behalf.

Although the Accused testified that he had initially dealt with one John Aura who is not a witness in this matter, it is not in dispute that Peter came into the picture and the Accused confirmed that he generated a copy of the rates bill/demand note for the complainant's property, for him.

The bill he generated is admitted in this trial as Defence Exh 5 and shows that the property had rent arrears amounting to ksh. 214, 250/-. It also shows the plot owner as 'Sigma Limited'.

The Accused acknowledges that met both Peter and the complainant in his office but the versions of what happened at the meeting differ, as the prosecution version is that while there, he demanded for a bribe of Ksh six million with an initial deposit of ksh 500,000/- while the Accused testified that he only explained to the complainant that his department was not involved in the issuance of transfers.

Prosecution relies principally for its contention on the contents of an audio recording covertly made during the conversion by Peter and which was transcribed by the investigator. Although the accused does not expressly acknowledge the recording, he does not overtly deny it. Evidence of recording of the transcript is found mainly in the testimonies of the Complainant, Peter, and the Investigator which is set out hereinabove.

The recorded audio transcript is before the Court as Pros Exh 3 while the digital form of the audio is also before the court in a compact disc- Pros Exh 15. The audio was also played in court a number of times. I will revert to it later.

In response in relation to what happened during the meeting, the accused contends that he only discussed the matter of transfer in his office when he met the complainant and Peter, by explaining to them that his department was not concerned with transfers.

He went further and summoned evidence, mainly letters- principally Defence Exh 8, 9 and 10 addressed to Taj Mall by one Nyoike N.I- Chief Valuer to show that his department had nothing to do with Transfers.

There are three pieces of his own evidence though, that seem to contradict his position.

The first is Defence Exh 7 a letter addressed to his boss-PW 2 by the complainant whose content clearly addresses the question of rates and not 'transfer' a matter which properly lay within the accused's and PW 2's department.

The next item is Defence Exh 6- a document entitled 'Transfer Requirements' which the Accused acknowledged he wrote but on the basis that his rates department still had what he called an 'advice' role in transfers. There is no plausible reason why the Accused decided to dabble in a matter that his department was not involved in by writing Defence Exh 6.

Thirdly the Accused testified that one of his duties in the Rates Department was issuing rates demand notices, and acknowledged that he issued Peter (PW 6) with a bill which is also a demand notice.

Mr Mong'eri highlights the transfer issue in his submissions by stating in part that *'the Accused person was not involved in transfers and there's no reason why a demand would have been made yet he was in a different department...'* and further that the Accused *'does not deal with ownership of properties or payment of rates'* but in the list of the Accused's duties in his submissions, he identifies one of the official functions of the Accused as *'issuing of rates bills'*.

It is clear that the defence took the position that because the issue at hand involved land transfer, which the Accused claims his department was not involved in, it would then be fallacious for anyone to allege that he made a demand for a bribe in those circumstances.

However, from the foregoing analysis, it is clear that this position cannot hold.

The matter raised by the complainant and Peter concerned land rates and it appears in fact to be the Accused's department that was turning it into a question of 'transfer', a surprising proposition when viewed against the assertion by the complainant that he had previously been paying rates under the same account.

Defence submission in this regard must therefore be, and is hereby rejected.

Against the Audio Recording and its Transcript, the Accused contends in his evidence that he was not properly identified by PW 2, but does not however contest, that PW 2 was his boss. He also testified that he had worked in his department for about seven months. He referred to Pros Exh 4, a certificate of voice recognition/identification to claim that it does not show whose voice the identifier was identifying. Having read the document though, I find no basis for this specific claim.

The stand taken by the Accused in relation to the role of PW 2 seems to be built on the witnesses' testimony regarding the matter which left quite a bit to be desired, because while he acknowledged that he had signed the voice recognition certificate, he insisted that he had not recognized the 'entire recording' but only 'some words'. He also testified that the audio quality was 'very bad' and 'not recognisable'.

By his own admission though, he does acknowledge that 'some words' were audible and therefore recognisable, which is a bit of a self-contradiction.

The Audio was played in open Court and I did noted on the record as follows;

*'... The recording is not clear in some points which have plenty of background noise. Accused voice is also very low in some parts and is not audible...'*

In the view of the Court, while the recording was not as good as one would expect, a matter also acknowledged by Ms Olajo in her own submissions at page 3, it was not 'unrecognizable' and was reasonably audible save for some parts which had plenty of background noise. As such, it is understandable that PW 2 was in fact able to recognize parts of the same and on the same basis, it was possible to generate a transcript from the recording which is reasonably accurate.

For purposes of identification of the Accused, PW 2 did not need more audio than was necessary to recognize his junior's voice.

I find that his identification of the Accused cannot logically be faulted on this basis. I am satisfied from the evidence that the right circumstances existed for PW 2 to be able to properly identify his junior officer by voice recognition. As such I reject any claim by the defence to the contrary.

As I indicated both the Audio Transcript and the digital form of the audio are before the Court. The investigator produced a certificate under section 106(B)(4) of the Evidence vouching for the integrity of equipment used to both record the audio and transfer it to compact disc, and its own authenticity.

It is contended by the defence that there was no compliance with the section but it is not very clear from Mr Mong'eri's submission what the violation was. The only thing apparent from the cross-examination of the investigator, is that he was made to admit that he had not indicated the serial number of the recording gadget on his certificate.

I have read Section 106(B) (4) of the Evidence Act under which the certificate is prepared and admitted. I find the general requirements of the section are met within the limits of the matter at hand.

I therefore do not find any fault in the certificate which would affect the credibility of the electronic evidence before the Court in that sense.

The Accused testified to it, and it is also contended in defence submissions that there was bad blood between the Accused and his boss –PW 2 suggesting that PW 2s evidence could have been biased against the Accused.

PW 2 in his testimony confirmed both under cross-examination and re-examination that he had a 'harmonious' working relationship with the Accused.

The Accused's reason for alleging bad blood was because as he put it in testimony; *'they were trying to block me from getting into that that office....'* He does not say who 'they' was and has called no evidence at all to support the claim.

His claim that the cross-examination of PW 2 demonstrated his allegation of bad blood is far from the truth, having regard to the testimony of PW 2 on record.

The Accused has not in my view, done enough to demonstrate his claim of bad blood with PW 2. I therefore reject it as far-fetched.

From the foregoing I conclude that the electronic audio evidence adduced herein by way of compact disc and as transcribed in Pros Exh 3 is properly before the Court.

I next consider the audio recording and specifically its transcript. It has the following material snippets of conversation;

*Kebas u: So ukiona nakujaga hapa, yeye ndiye ananisukumaga nianglalie*

*ng'ombe yake iko wapi imekata kamba ama haijakata kamba.*

...

*Manoti : Hii mambo imekuwa tumeiangalia.*

*Kebas u: Uh ilikuwa imekata kamba?*

*Manoti : Kamba ilikuwa imekata.*

*Kebas u: Alikuwa amekuwa aje?*

Manoti  
: *Kamba alikuwa, ilikuwa imekata kamba*

Manoti  
: *Lakini tutairudisha.*

Kebas  
u: *Mtarudisha?*

Manoti  
: *Eeh tulikuwa tumeongea na yeye.*

Kebas  
u: *Si mimi naona hiyo figure ni juu sana*

Kebas  
u: *Nilikuwa nasema hiyo six million iko juu*

Manoti  
: *Mmmh*

Kebas  
u: *Haiwezi kuja chini?*

Ramesh:  
h: *Aah mimi naona vile tulikuwa tunafanya kila kitu mzuri as in*

*paying the land rates ahead kila kitu...mmh*

...

Ramesh:  
h: *Si usaidie tu kama anaweza teremka chini*

Manoti  
: *Nitamwambia*

....

Ramesh:

*Na kama hiyo deposit inaweza chukua muda gani kurekebisha?*

Manoti:

*(unclear voices) the same day that's the information*

...

Ramesh:

*Si tumesema five?*

Manoti:

*Five hundred...*

*At page 6*

Ramesh:

*Lakini yeye atakuja peke yake sitakuja na yeye tumalize leo leo*

Ramesh:

*Sawasawa?*

Ramesh:

*Eeh?*

Manoti:

*Six million*

Ramesh:

*Hapana kuteremka ifike five?*

Ramesh:

*Haya sawa tupatane*

Manoti:

*Sawa.*

At the end of the transcript is a transcription certificate signed by James Wachira and a confirmation certificate signed by Peter.

One of the contentions by the defence is that Peter did not identify the voices of the participants to the conversation during transcription by the investigator.

This is likely derived from Peter's own response to that effect during cross-examination. On the other hand the investigator asserted that he called Peter to identify the voices which creates a contradiction between the two prosecution witnesses.

I note that the transcript has Peter's certificate and signature, which is not contested, confirming the contents of the transcript dated 23/12/2016. I reckon that this confirmation, which happened way before he testified in court on 29/11/2019, is also a confirmation of the participants, but importantly, in my view, when Peter testified, the recording was played and he was able to confirm the voices in open court.

In these circumstances I do not therefore think much turns on the acknowledgement by Peter that he was not present during the actual transcription of the recording.

Form the snippets of audible conversation that I have reproduced herein above, the testimony of Peter that he had earlier met and conversed with the Accused prior to the recording, and that the Accused had then demanded a bribe which matter he then went and informed the complainant, is confirmed.

There is also no doubt in my mind that the conversation, taken as a whole shows an express and explicit demand for a bribe.

It is notable that the conversation entails use of figurative or cryptic language employing terms like '*ng'ombe imekata kamba*' and such and evidently very little speaking by the Accused but the Accused still made a contention that there was only mention of '*ng'ombe*' and mention of numbers such as '*six million*' without any reference to what it specifically referred to.

From the context of discussion though, it is plain to the court, and I infer that the subject of discussion is money and nothing else.

Prosecution evidence shows that following the receipt of a complaint and ascertainment of demand by EACC Officers, an arrest operation also commonly (and erroneously) referred to as a 'trap' operation was arranged between Peter, and EACC Officers.

According to the prosecution version, the end result was the arrest of the Accused at Nairobi's Ankara Hotel having received the sum of ksh 100,000/- that was treated for the operation.

It is the prosecution evidence that Peter was given this money inside an envelope to give to the Accused only upon demand. He was not to touch it prior.

It is also the prosecution evidence that the Accused did receive the money from Peter at the said hotel where according to Peter, he chose to, rather than at the office. Peter also delivered to him a cheque for ksh 214,250/- (Pros Exh 7) being Land Rates arrears which according to his

testimony, he was to deliver to the Accused alongside the bribe. It is the complainant's evidence that he wrote the cheque and gave it to Peter and this is evident on its face.

Prosecution evidence also shows that during the time of hand-over of the money by Peter, an EACC Officer Osman Abdi was inside the hotel. According to the investigator, Abdi is the one who beeped him from outside the hotel where he was to signify that the transaction was complete. For some unknown reason, Abdi was not called in this matter as a witness.

Prosecution evidence is that when the Investigator and Shehe Bakari went in to arrest the Accused, he removed the treated money from his pockets and threw it on the floor. The investigator testified that he picked it from there using clean gloves. Shehe Bakari then made swabs of both hands of the Accused and put them in envelopes (Pros Exh 5(a) and (b)). He too confirmed seeing the Accused throw the money on the floor, and the investigator pick it.

It is also prosecution evidence that following his arrest, a number of recoveries were made and inventoried, starting with the money (Pros Exh 9), whose inventory is Pros Exh 6, the cheque whose inventory is pros Exh 8, and a grey coat then worn by the Accused, whose inventory is pros Exh 18.

It is also the prosecution evidence that the money, the swabs and the coat were analyzed by PW 5- a Government Analyst and were found to have traces of APQ.

Specifically, the coat had traces on more than one pocket as shown in evidence hereinabove.

In his defence, the Accused denies that he received the treated amount of ksh 100,000/-. His version is that Peter tried to give a brown envelope to him which 'contained money' and he refused, as result of which Peter threw it at him and it fell on the floor.

He agrees that he received the cheque- Pros Exh 7, which according to him, peter removed from the same envelope that contained treated money, a matter that Peter denies, stating that the cheque was not in the same envelope as the treated money.

In an apparent bid to explain why traces of APQ chemical were found on the left and right hand swabs of his hands, he stated that it was likely from the cheque or a physical greeting that he received from Peter when they met.

The Accused further testified that he did not sign any of the inventories- Pros Exh 6, 8 and 18 which indeed is the case as is evident from Pros exh 6 and 18 which have his name and no signature.

Under cross-examination, the Investigator was made to admit that Ankara Hotel had CCTV cameras but he stated he did not view them

Defence raises a number of contentions in its submissions against the foregoing prosecution evidence, the first one being that there is no video evidence from Ankara hotel to show that the Accused received the money.

It is further contented that failure to have the Accused sign the recovery inventories was fatal as was failure to avail CCTV footage as evidence by the prosecution. The same contention is made in relation to contradictory evidence relating to APQ being found on several pockets of the Accused's coat, while the investigator testified that the accused removed the money from one specific pocket.

In response, Ms Olajo contends that the Accused did not deny that the recovered items were found on him and the failure to sign the inventories do not negate the fact and that the inventories were properly produced.

She also contends that failure to adduce CCTV footage does not affect the prosecution case since evidence that the Accused had APQ powder on his hands already proves the fact.

Finally in relation to APQ powder being found in more than one coat pocket of the Accused's coat, Ms Olajo contends, that it was possible that he touched the other pocket of his coat before it was handed over to EACC. This submission however is not backed up by any evidence in the submission, and amounts to conjecture on the part of Ms Olajo.

In relation to the contention that the evidence does not show that the Accused received the treated money, the biggest challenge the defence faced is to explain the presence of APQ on both of his hands and coat as already demonstrated.

The Accused does not deny that the grey contaminated coat presented in Court as Exhibit 11(c) was his. The fact that traces of APQ were found along the pocket areas is highly suggestive of him having placed the hands in those areas. This seems to support the evidence by Peter that he received the money, counted it and put it in his coat pocket, and the evidence of the investigator and Shehe Bakari that he removed the money from his pocket and threw it on the floor.

That scenario presents high chances of contamination of *both hands*, a matter that is confirmed in the finding that both the left and right hand swabs from the Accused's hands were contaminated.

This also casts serious doubt on the Accused's claim that he may have received APQ contamination from a greeting he received from Peter, unless he is saying in effect that he used both hands in the greeting.

The Accused admits that he received the cheque at Ankara Hotel but not the bribe money. The big question presented by this is why he received the cheque at a hotel and not in his office which was a stone's throw away. Although he attempted to explain that Peter had offered

to buy him tea at the hotel, the evidence shows that Peter first went to his office and they left together for the hotel. The question is why he did not receive Peter's cheque in the office before they left for tea. He also explains that a receipt for the payment was to issue later which does not make sense.

From his evidence, the Accused also contradicts himself by saying that Peter threw the envelope 'with money' on the floor while at the same time asserting that he removed the cheque from which he got likely contamination with APQ, from the same envelope. It also begs questions how he knew the envelope had money without seeing its contents, although it does appear in the evidence of EACC Officers that the money was not in the envelope when they picked it, suggesting spillage.

The above matters by themselves cast serious doubts on the veracity of the version by the Accused, but it is obvious that the claims cannot stand in the face of this court's finding based on the audio recording that the Accused had earlier demanded for a bribe.

Moreover, it does not appear that the accused confronted prosecution witnesses especially Peter with the issues he raises in his defence, such as that of Peter's offer of tea at Ankara Hotel, or the claim that he threw the money to the ground, which makes his defence claims a concoction and an afterthought.

Upholding the Accused's theory would also amount to finding that Peter, the complainant and EACC Officers who testified in this trial lied against him. No reason for such malice from the witnesses emerges from the Accused's evidence.

In relation to the contention that no CCTV video evidence was adduced from Ankara hotel, I am in agreement with Ms Olajo's submission to the effect that she needed not bring more evidence than was necessary to prove the point. It is indeed the defence who should have brought any such evidence in attempt to shake prosecution evidence already on record, tending to prove the fact.

As to the allegation that the Accused did not sign the recovery inventories, I agree that this is an investigative irregularity but as submitted by Ms Olajo, other evidence on record which is not contested is clear about where the recoveries in this matter were made and who made them.

Inventories while important for documentation purposes, assume greater importance in a trial when there is a dispute as to a recovery or matters surrounding it. I have also noted that on some of the inventories, Peter who was present also did not sign, which oversight is therefore not purely a matter for the Accused.

In relation to the claim that APQ chemical was found on more than one pocket of the Accused's coat, as I have already stated, the presence of any APQ chemical traces on the Accused's person in the circumstances proved in this case is incriminating in itself, even without venturing into the specifics of the points where it actually was found.

Moreover, such a claim by the Accused is inconsistent with the findings I have already made in this matter and unhelpful to him.

In conclusion I find that from the totality of prosecution evidence adduced herein the ingredients of a charge both under section 39(3(a) of the ACECA (repealed) and under section 6 of the Bribery Act 2016 (the transition law) are proved beyond all reasonable doubt.

It is clear under Count 1 that the Accused solicited or requested for an advantage of ksh 6 million from Peter in order to 'rectify' the complainant's rates account which matter related to the affairs of his office and /or was a relevant function or activity in his capacity as a public offer employed at the Nairobi County Government Rates Department.

It is also clear under Count 3 that the Accused received a bribe of ksh 100,000/- under the same circumstances.

In his defence, the Accused attempted to show that he had not demanded for any such sum in the Transcript, which is correct. The evidence however shows that he received a bribe and it avails him not to claim that it did not tally with what he had solicited. A bribe does not cease to be such because it is only partial.

I conclude that the Accused's defence in this trial cannot stand and I reject it.

In the end, I convict him in both **Count 1** and **3** under section 215 CPC. R/A 14 Days.

**FELIX KOMBO**

**CHIEF MAGISTRATE**

**Delivered in open court this 22nd day of January 2021**