



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL APPEAL NUMBER 20 OF 2017

(From original conviction and sentence in criminal

case number 1005 of 2017 in the Principal

Magistrate's Court at Kapenguria)

EMMACULATE NAFULA AKA MILDRED.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

EMMACULATE NAFULA ALIAS MILDRED NGOME, was charged in lower court with the offence of **Stealing by Servant, contrary to Section 281 of the Penal Code.**

The particulars of the offence are that on the 19th day of June, 2017 at Makutano Township of West Pokot Sub-County, within West-Pokot County, the appellant being a servant to Paul Lomuna, stole cash kshs.60,830/- the property of the said Paul Lomuna which got into her possession by virtue of her employment at Generation Bar and Restaurant.

On 18.10.2017 when the appellant was arraigned in court and the charge was stated to her she pleaded guilty to the offence. In mitigation she prayed for pardon and indicated that she took the money to help her son who was in school and had been arrested. She expressed willingness to refund the money if reinstated at work. The trial court asked for a probation report of which was not in favour of a non-custodial sentence given the appellant's past conducts and character. It was concluded that she is a flight risk. The court sentenced her to serve 3 years imprisonment.

Her most of the grounds of appeal appears to have been reproduced from an appeal in a case of manslaughter or murder, where full evidence was heard. The grounds are as follow:-

1. That she pleaded guilty at the trial
2. That the learned magistrate erred in law and facts when he failed to give cogent reasons for objecting to her defence.
3. That she was convicted without sufficient evidence to warrant a finding of guilty.
4. That investigations were poorly conducted as the investigating officer did not visit the scene.
5. That she was convicted on inconsistent and contradictory evidence of the prosecution witnesses.
6. That she was not allowed enough time to prepare her witnesses.
7. That the evidence on the postmortem report and that of the witnesses was not corroborative.
8. That the case against her was not proved by the prosecution to the required standard in law.

The appellant in her written submissions of which is in Swahili gives a detailed account of what according to her happened. She does not address her grounds of appeal of which do not even fit in her case.

The state prosecutor opposed the appeal on the ground that she pleaded guilty to the offence in the lower court and in accordance to provisions of **section 348 of the CPC**, no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence. The state prosecutor further averred that the offence attracts a maximum sentence of 7 years imprisonment, and 3 years imprisonment to the appellant is legal. Given the circumstances under which the offence was committed it was not harsh and excessive. She urged the court to dismiss the appeal.

In deciding this appeal I have gone through the lower court proceeding in order to establish whether the plea of guilty was unequivocal. Having done so, I have established that the lower court well complied with the procedure given in the case of **Adan versus Republic [1973] EALR 445** on plea taking. I can therefore confidently state that the plea was taken in accordance to the law and was unequivocal. The appellant does not also challenge the procedure of the plea taking. Having said that she was therefore only entitled to appeal against the sentence, in law. As was correctly submitted by the state prosecutor, a sentence of 3 years imprisonment for an offence that carries a maximum sentence of 7 years in prison, is not harsh and excessive. The sentence is legal and this court has no cause whatsoever to interfere with it. The appeal is therefore unmerited and is hereby dismissed.

Judgment read in presence of the appellant and the state prosecutor, Madam Kipto, this 31st day of January, 2018.

S. M. GITHINJI

JUDGE

31.1.2018