



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CRIMINAL APPEAL NO.28 OF 2016**

**TOWETT WASHINGTON.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The appellant was charged with the offence of giving false information to a person employed in public service contrary to Section 129(a) of the Penal Code.

The particulars of the charge were that in May 2015 at Chepkube Police Station within Bungoma County the appellant Towet Washington Naibei informed IP. Patrick Muthuri, a person employed in Public Service as a police Officer that his National Identity Card and Kshs.8000/- had been taken by police and that information he knew or believed to be false intending thereby to cause IP. Patrick Muthuri to carry out investigation which he ought not to have done if the true state of facts respecting which such information was given was known to him.

2. The appellant pleaded not guilty and the matter proceeded to full hearing, the appellant was thereafter convicted and sentenced to serve five(5) years imprisonment.

3. Being aggrieved by the judgement the appellant appealed to this Court on the following grounds; the sentence was unsafe, the trial Court erred in dismissing the alibi; the appellant was not issued with witness statements; evidence before Court was contradictory, shoddy, flimsy and insufficient to warrant a conviction.

4. The brief background is that, the appellant had been charged with a different offence and while in Court he complained that a police Officer had stolen from him Kshs.8,000/-. The matter was then referred for investigations when he informed I.P. Patrick Muthuri of Chepkube Police station that one PC Ngore had stolen his ID, Safaricom wallet and Kshs.8000/- prompting an investigation. Several people were interviewed including a security Officer from Uganda who had initially apprehended the Appellant, AP Police who received the appellant from their Uganda Counterpart, the said PC Ngore and the investigating Officer. PW1 formed the opinion that the appellant had given false information as several people had searched the appellant before he came into contact with the person he accused and at no point was he found with any money such that when P.C. Ngore in the presence of his O.C.S. and several other people searched him he only had an I.D. and a Safaricom wallet.

5. This being the first appellate Court it has considered the evidence afresh, analysed and evaluated the same in order to arrive at an independent opinion. See **Okeno Vs R (1973) E.A. at 322.**

6. All those who testified in the matter save one described as a member of public from Uganda were Police Officers. Their evidence was similar, that upon his re-arrest by Kenyan Police at 6a.m. the appellant had no money on him and that P.C. Ngore arrested him much later at 10a.m. in the presence of other Police Officers and only an I.D. and a Safaricom wallet were found on the assailant.

7. In his defence the appellant maintained that when handed over to the Kenyan Police he had an ID Card, a Safaricom wallet and Kshs.8,000/- as he had gone to Ugandan to purchase pesticide for his crop. In his evidence he did not state that he had been searched by the Ugandan police. He does not exactly say which Officers initially interrogated him and took his items, it is not clear either whether those were the A.P. Police or even the regular Police from Chepkube.

He may have lost his money but indeed he could have lost his money long before P.C. Ngore arrived.

The appellant has maintained his version of the story even to this Court despite his having been incarcerated. He may indeed have lost money as observed earlier though even from his evidence he may have lost the money to anyone else other than P.C. Ngore and it is not clear why he named him.

8. From the circumstances of this case my view is that the appellant having named an Officer who may not necessarily have been the person

who first search him limited the scope of investigations even though his claim may have been genuine.

9. However the action taken against him was in my view unnecessarily harsh and since all interrogated and all who gave evidence were Police Officers, except one described as a security Officer much ought not to have been expected.

10. The offence the appellant was charged with carries a sentence of 3 years. He was however convicted for 5 years which makes the sentence unlawful. He was convicted on the 22<sup>nd</sup> of January, 2016 and has so far served for 1 year and 10 months.

11. Even if the conviction was proper in my view the above sentence of 1 year and 10 months is more than adequate against the unlawful sentence.

12. For the above reasons the appellant is hereby set free.

**DATED and DELIVERED at BUNGOMA this 23<sup>rd</sup> day of November, 2017**

**ALI ARONI**

**JUDGE**