



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL APPEAL NO. 12 OF 2014

JUDY WARUGURU KAGAI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

*(An appeal from the judgment of the Principal Magistrate's
Court (T. Mwangi) at Wanguru, Criminal Case No. 735 of 2011
dated 16th June, 2014)*

JUDGMENT

1. **JUDY WARUGURU KAGAI** the appellant herein was charged vide **Principal Magistrate's Court Criminal Case No. 735 of 2011** at Wanguru Law Courts with stealing by servant contrary to **Section 281** of the **Penal Code**. The particulars of the charge were that on 1st October, 2011 at Ngurubani Township Kirinyaga County being an employee of Mwea Rice Growers Society, she stole Ksh.6,000 from the society which came to her possession by virtue of her employment. After the trial the Appellant was found guilty and convicted and as a result sentenced to serve three (3) years in jail. She was aggrieved by both conviction and sentence and preferred this appeal.
2. The Appellant raised 4 grounds of appeal in the amended petition which are as follows:

The learned trial magistrate erred both in law and fact in that:-

- i. **She wrote and signed the judgment on 7th March, 2014 when she had been declared by the judges & Magistrates Vetting Board as being unfit to continue serving as a magistrate on 31st January, 2014. The judgment was therefore before the eyes of the law a nullity, void, abinitio & without any legal basis whatsoever.**
- ii. **The learned trial magistrate failed to appreciate that since the complainant was MWEA RICE FARMER SACCO TEBERE according to the charge sheet, the charge sheet was defective as the appellant had never been at anyone time been a servant and/or employee of such an entity BUT was at one time a servant and/or employee only of MWEA RICE FARMERS SACCO SOCIETY LTD – the two entities in law are not synonymous.**
- iii. **She failed to appreciate that there were glaring gaps in the prosecution case & it could not at all be said that the prosecution proved its case against the appellant beyond any shadow of doubt or at all to secure a conviction – as required in all criminal cases.**

- iv. **The conduct of the trial by two different magistrates, the reading/delivery of judgment by another (3rd one) and the glaring non observance of basic issues of law & criminal procedure renders the entire case a MISTRIAL hence a nullity.**
3. The main gist of this appeal in my view is hinged on the 1st ground which is the fact that the judgment appeared to have been written and signed by Hon. T. Mwangi, a principal magistrate on 7th March, 2014 after she had been declared unfit to act as a judicial officer by Judges and Magistrates Vetting Board on 31st January, 2014.
 4. The State, through the Office of the Director of Public Prosecutions through Mr. Sitati conceded to that fact. The appeal in my view and in the light of the circumstances obtaining is uncontested and there is no need of going into the merits of the other grounds raised.
 5. I have considered the sentiments and/or submissions made by Mr. Njuguna for the Appellant and the submissions made by Sitati and I have come to the conclusion that the interests of justice will be served if the matter is referred back to the subordinate court for retrial before any of the magistrates sitting in Wanguru Law Courts at the moment.
 6. Consequently under the powers conferred to this Court under the **Section 354 (3) (1) (a)** of the **Criminal Procedure Code**, I will allow this appeal. The conviction of the Appellant is hereby reversed and the sentence set aside. She stands discharged but I shall order that she will now be retried afresh by another court of competent jurisdiction at Wanguru Law Courts. It is so ordered.

Dated and delivered at Kerugoya this 23rd day of June, 2015.

R. K. LIMO

JUDGE

23.6.2015

Before Hon. Justice R. Limo

Court Assistant: Willy Mwangi

Appellant present

Nyambura holding brief for Kariuki for appellant.

Omayo for State present

COURT: Judgment signed, dated and delivered in the open court in the presence of Nyambura holding brief for Kariuki for the Appellant and Omayo for State.

R. K. LIMO

JUDGE

23.6.2015

MR. OMAYO: We pray for a mention date when the accused will appear at Wanguru Law Courts for purposes of fresh trial.

NYAMBURA:We pray for 25th June, 2015.

COURT: The accused shall appear at Wanguru Law Courts on 25th June, 2015 but shall first pass by the office of prosecution Wanguru for purposes of fresh trial. The accused may be released on bond on same terms she has been.

R. K. LIMO

JUDGE

23.6.2015