

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 58 OF 2011

1. CHARO KATANA RANDU 1ST APPELLANT

V E R S U S

JUDGMENT

1. **“1. CHARO KATANA RANDU**

The Appellants pleaded not guilty and a trial ensued. At the conclusion of the trial the Court convicted them as charged and sentenced them to pay a fine of Kshs. 50,000/- each and in default to serve 12 months imprisonment.

4. Learned Counsel for the State Mr. Mungai did not oppose the appeal against conviction and sentence. He submitted that the complainant’s evidence was contradictory and could not be relied upon to support a conviction. He proceeded to examine the trial Court’s evidence in his submissions.
6. I have reassessed the lower Court's evidence and I too find that the evidence was so full of glaring contradictions that it was not safe to be a basis for conviction.
8. The complainant in evidence first stated that she gave Kshs. 450,000/- to her sister who in turn gave it to the 1st Appellant and who in turn gave it to the 2nd Appellant. The 1st Appellant is the complainant's brother-in-law whilst the 2nd Appellant is her nephew. Later, she said that she was invited by the 1st Appellant to see how the money was being printed. The one who was printing the money was called Musa. The 2nd Appellant was not present where the money was being printed. The complainant then stated-

On complainant being cross examined in her response which is not too clear suggested that the Appellants did not receive her money. She stated-

Further the complainant stated-

Bendera was PW2. She denied that she witnessed anything that happened before the arrest relating to this case.

12. complainant informed him that she ***‘was approached by her sister (Bendera) mother to accused 1 and wife to accused 2 who told her had know (sic) some persons who could have multiplied the money. She (complainant) said that the two brought two other persons marked (sic) the money, they tied the money put in the house asked her to wait for it to mature. She later realized she had been conned.’***

14. There is no doubt that this case was poorly investigated and prosecuted. The prosecution did not lead evidence of the black paper which the complainant said was given to her. On the whole there is sufficient doubt to lead this Court to allow the appeal as sought.

15. The lower court's conviction is hereby quashed and the sentence is hereby set aside. The Court orders that each of the Appellants be refunded the fine of Kshs. 50,000/- on evidence being produced of such payment.

MARY KASANGO

<p justify="" margin-left="" 40px;"=""> **JUDGE**