



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 6 OF 2010

BONIFACE ANANI ODIALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence made by the learned Senior Principal magistrate at Kericho court (Hon. W. Nyarima) in Kericho Senior Principal Magistrate's court criminal case No.594 of 2010 on 1/03/2010)

JUDGMENT

BONIFACE ANANI ODIALA, the appellant herein was convicted on his own plea of guilty for the offence of stealing by servant contrary to **Section 281** of the **Penal Code**. He was thereafter sentenced to two years imprisonment. Being aggrieved, the appellant preferred this appeal. He put forward the following grounds of appeal:

- 1.That I pleaded guilty your honour.**
- 2.That the sentence is highly excessive your honour.**
- 3.That I was not guided properly before taking my plea.**
- 4.That the plea was an illegality.**

Let me first set out the case that was before the trial court. The particulars stated on the charge sheet are that on diverse dates between 9th and 23rd February 2010 at Samchi Telecom Ltd, Kericho branch in Kericho District within Rift Valley Province, being a servant of Samchi Telecom Ltd stole from it Kshs.75,797 and Safaricom airtime cards worth Kshs.4,835.50 all valued at Kshs.80,635.50. The complainant outlined the facts showing that on 23rd February 2010 an audit was done which found that the appellant had sold cards worth Kshs.75,787 and did not bank the proceeds. He also failed to give an explanation for his failure to bank the same. He also did not explain the whereabouts of the missing airtime cards from the shop worth Kshs.4,835.

The appellant admitted the particulars of the charge and the facts as outlined. He is now before this court claiming the sentence was harsh and excessive. He also claimed that he was not properly guided when taking plea. In his written submissions the appellant claimed the court used a language he did not understand. He further argued that he was not given a chance to mitigate. Mr. Mutai, learned Senior Principal Prosecuting counsel opposed the appeal on the ground that the plea was taken in a language the appellant understood. He also pointed out that the sentence was not harsh nor excessive.

I have considered the competing arguments and it is clear from the record that the charge was read in Kiswahili language. The appellant also spoke in Kiswahili language when answering the charge. There is nowhere to show that the appellant did not understand Kiswahili language. The facts outlined by the prosecution in my view established the offence the appellant was convicted for. The appellant has stated that he was not guided properly before taking the plea. I do not understand the guidance needed by the appellant. It is apparent that the substance of the charge were read and explained to the appellant in Kiswahili language, a language he even spoke when he appeared on appeal. The prosecution outlined the facts in a simple language which did not require further elaboration. I find that the plea was unequivocal hence clear to the appellant.

The other question which this court must grapple with is whether the sentence of two years imprisonment is harsh and excessive. The record shows that the appellant was given a chance to mitigate but he chose to keep quiet. Under **Section 281** of the **Penal Code**, the maximum sentence prescribed is seven (7) years imprisonment. The appellant was sentenced to serve two years imprisonment. I find the sentence meted out against the appellant not harsh nor excessive. I see no merit in the appeal, the same is dismissed in its entirety. The appellant has been out on bond pending appeal since 21st February, 2013. Now that the appeal has been dismissed the appellant should proceed to serve the remainder of the sentence if any.

Dated, Signed and delivered this 22nd day of November, 2013

J.K.SERGON

JUDGE

In open court in the presence of:

Appellant in person

In the absence of the Director of Public Prosecution but with Notice

Mr. Korir- court clerk