



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL APPEAL NO. 3 OF 2010

ERICK KIPRONO KERINGAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from the sentence of the Senior Principal Magistrate at Kericho, Hon. W. Nyarima given in Kericho SPM CR. Case. NO. 25 of 2006 on 10/2/2010)

JUDGMENT

ERICK KIPRONO KERING, the Appellant, was on 10/2/2010 convicted in Kericho Senior Principal Magistrate Court in Cr. Case No.25 of 2006 by the Senior Principal Magistrate, Hon. W. Nyarima, on five counts of soliciting for a benefit contrary to **Section 39 (3) (a)** as read with **Section 48 (1)** of the **Anti-Corruption and Economic Crimes Act, No.3 of 2003** and on two counts of receiving a benefit contrary to **Section 39 (3) (a)** as read with **Section 48 (1)** of the same Act.

The learned trial Magistrate considered the evidence adduced by the prosecution and the defence proffered by the appellant and came to the conclusion that the evidence adduced by the prosecution was credible and he believed it and found the charge proved against the appellant whom he convicted on all the seven counts in the charge sheet. He sentenced the appellant to a term of three years in prison on each of the seven counts, the sentences to run concurrently.

Aggrieved by the conviction and sentence, the appellant lodged the appeal herein in which his advocates, Messrs Nyaingiri & Company, put forward 23 grounds of appeal many of which were not really grounds but submissions. In summary, the main thrust of the grounds of Appeal was that the charge was defective, that the conviction was against the weight of the evidence, and that the sentence meted out was manifestly excessive.

This court is alive to the need to carefully re-evaluate the evidence adduced at the trial with a view to make its own inferences, deductions and conclusions so as to give the appellant a fresh reconsideration of the case.

The appeal came up for hearing before me on 17/11/2010. The appellant was represented by Mr. Nyaingiri, Advocate, from the firm of Nyaingiri and Company Advocates, while the Respondent was represented by Miss. M. N. Idagwa, a State Counsel from the office of the Attorney General.

It was conceded by Miss. Idagwa for the Respondent that on 22/10/2007, the trial Court heard the evidence of Bernard Kiprotich Mutai in the absence of the accused. That evidence related to counts 1, 3, 4 and six. It is trite law that an accused person must be given a fair hearing which includes the right to be present when evidence is being given in support of the charge against him. Hearing of the case in the absence of the accused was very prejudicial to his rights and was against the basic concept that an accused must be accorded a fair hearing in a criminal case. Miss. Idagwa did concede, and rightly so, that to the extent to which the trial Court heard evidence in absence of the appellant, there was miscarriage of justice. Although the evidence given to the trial Court by Bernard Kiprotich Mutai, in absence of the appellant related to counts 1, 3, 4 and 6, it seems to have bearing on other counts as well.

In the light of this, I am constrained to quash, which I hereby do, the conviction on all the seven counts. I set aside, the sentences. If held, the appellant shall be released and set free.

DATED at KERICHO this 1ST Day of FEBRUARY, 2011

G B M KARIUKI, SC

RESIDENCE JUDGE

COUNSEL APPEARING

Mr. Nyaingiri, Advocate, for the Appellant

Miss.N.M Idagwa, State Counsel, for the Respondent

Mr. R. Koech, Court clerk