



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL REVISION NO.7 OF 2011

**RISPER BICHERE NYABUTO alias EUNICE
BOSIRE.....APPELLANT**

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The accused in this matter **Risper Bochere** was arraigned in court on the 8th of April, 2011 and charged with the Offence of Stealing by Servant contrary to Section 281 of the Penal Code.

The particulars of the offence were that on the 2nd April, 2011 in Ndhere Village in Kapiyo Sub-Location in Bondo District within Nyanza Province, being a servant to **Grace Adhiambo Otieno**, jointly with others not before the court, she stole two sacks of grain maize, a half sack of millet, twenty pieces of window nets, assorted clothes, four suitcases, six hens, three cocks, one Sonitex radio, seventy two drinking glasses, two water jars, ten plastic buckets, twelve basins, twelve pairs of children shoes assorted sizes, sheets, one small black handbag, five forks, 1 salt shaker, 1 tea pot, 20 table mats, 1 wood curving and one solar panel of barefoot power pack all valued at approximately Kshs.200,000/=. She was faced with an alternative count of Handling Stolen Property as itemized above contrary to Section 322(1)(2) of Penal Code.

The accused pleaded guilty to the main count and sought for leniency.

The lower court convicted the accused on her own plea of guilty . In convicting the accused the learned trial magistrate stated:

“I have noted what accused has said in mitigation and fact that she is a first offender. However, a

number of stolen items were not recovered. Accused betrayed the trust of the complainant had in her by entrusting her with care of her property. She doesn't deserve any mercy."

With the above sentiments the trial court sentenced the accused to two years imprisonment.

Placed before me is a letter on the letter head of the Ministry of Gender, Children and Social Development and signed by one Humphrey Wandio a District Children's Officer. The letter is addressed to the Senior Resident Magistrate Bondo District.

The Resident Magistrate Bondo forwarded the letter to the Deputy Registrar who in turn forwarded the same to the High Court for direction.

I wish to bring to the attention of the Judicial Officers who forwarded the file to the High court the following:

- 1. The Resident Magistrate has no powers to revise a judgment. He became functus officio upon delivery of his judgment. The letter to him was therefore misplaced.**
- 2. The Deputy Registrar in my view ought not to have forwarded the file to the High Court for reasons I shall explain later.**
- 3. The Ministry of Gender, Children and Social Development has no role to play in a matter before court, its advice on the appropriateness or otherwise of a judgment is totally misplaced. In my view the officer who wrote the letter acted outside his mandate and may indeed seem to be an interference with the independence of the Judiciary which as Judicial Officers we ought to jealously guard. The officer should be concerned with the child. Nothing stops him from placing the child in children's home. This is more of his work.**

Having stated as above I will nonetheless consider the law relating to revision of cases.

Section 362 of the Criminal Procedure Code provides:

"The High Court may call for and examine the record of any criminal proceedings before s subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."

Although I frown at the manner in which this matter came to my attention I will nonetheless considered whether or not the matter is deserving of a revision. I do concur with the sentiments of the trial court, that the offence committed by the accused was grave, secondly the accused betrayed the trust bestowed on her by the employer and for the said reason she certainly deserved to be punished.

I further do find that the sentence metted out by the learned trial magistrate was appropriate in the circumstance and therefore I see no reason to interfere with the same.

This ruling be served upon the Resident Magistrate Bondo, the Deputy Registrar and the Ministry of Gender and Social Development for circulation among its officers.

Dated and Delivered this 26th May 2011

ALI-ARONI

JUDGE