



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
Criminal Appeal 69 of 2007  
CHRISTOPHER MUNYI NJUE.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant was charged with 5 counts of stealing contrary to Section 275 of penal code before the Senior Resident Magistrate in Kerugoya. He pleaded not guilty on all 5 counts and the matter went to full hearing after which he was found guilty and convicted. The Judgment of the trial magistrate does not indicate specifically which counts he was convicted on. Indeed even the sentence imposed only indicates that he was sentenced to serve 2 years imprisonment. It does not specify the sentence imposed for each offence. Although this failure may not have caused any prejudice to the appellant, the magistrate must indicate in his Judgment the counts for which an accused has been convicted. If he has been convicted on all the counts the Judgment must clearly say so. The sentence should also be meted out for each count and the same should be followed by an order as to whether the same should be served concurrently or consecutively. The Judgment in this case fails to comply with the provisions of Section 169 of the Criminal Procedure Code. That was nonetheless only an observation as the issue had not been raised by the appellant. It is something however that this particular magistrate should take note of.

Coming to the substantive appeal, the appellant being aggrieved by the conviction and sentence filed this appeal initially relying on 8 grounds of appeal as per his petition of Appeal dated 16/5/2007. He later filed a supplementary record of appeal with 2 grounds which were basically on the issue of the language used at his trial. He contends that the record does not show the language used at the trial.

Learned counsel for the state conceded this appeal. He conceded that the record does not indicate the language used and further that the appellant's signature was not taken for examination to confirm that he was one of the persons who had signed the stolen cheques.

I have gone through the proceedings before the trial court. I have also considered the grounds of appeal proffered by the appellant herein and the concession of the appeal by learned counsel for the state. Having done so, I have arrived at the informed conclusion that the concession by the state was justified. I find it unnecessary to reanalyze in detail the evidence adduced by the trial court.

I can however state that from the record, the only evidence that seems to have been relied upon to convict the appellant was that he is the one who went to PW1 (previously a co-accused) and collected the cheque books

and other documents. This evidence was nonetheless not supported by evidence of a delivery book or any other evidence to show that indeed the appellant had taken the said documents away. I note further that there was no evidence as to when exactly the cheque leaves in question were plucked out. Even assuming that the prosecution had proved that the appellant took away the books, it cannot be said beyond a doubt that the cheque leaves disappeared then or before or after he had returned the said books. The assumption that the cheque leaves were stolen at the time the appellant had taken the books was based on pure conjecture and not on solid evidence.

Secondly, as rightly stated by the state counsel, his signature was not submitted for examination by the documents examiner. There was therefore no evidence whatsoever that he forged the signatures which enabled the cheques to be cashed. The person in whose account the said money was deposited did not also testify and it cannot therefore be said with certainty that he did not withdraw the money himself. Even without the issue of the language used in the proceedings, the evidence itself left a lot to be desired. It fell too short of the bar and did not prove the case beyond reasonable doubt.

The ground on the issue of language would indeed solely dispose of this appeal. The record shows particularly on the dates the evidence was taken that the language used by the witnesses who testified is not indicated.

Further, it is not indicated whether the court interpreter interpreted the proceedings at all. The right of interpretation of the proceedings into a language understood by the appellant cannot be gainsaid. It is conferred by the constitution as a fundamental right. The trial court has the duty and responsibility to ensure that the language used in court is clearly indicated in the record in absence of such indication, the appellate court cannot assume that the appellant understood the language used.

For the foregoing reasons, I find and hold that the conviction and sentence against the appellant are unsustainable. This appeal succeeds. I allow the same and quash the conviction and set aside the sentence of 2 years imprisonment.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 19th day of May 2010.

**In presence of:- appellant for Mr.Mogusu for Ms.Thungu for him and Mr.Wohoro for state**