



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 385 of 2007

NANCY GAKII BUNDI APPELLANT

- AND -

REPUBLICRESPONDENT

(An appeal from the judgment of Senior Resident Magistrate Mr. Maundu dated 8th June, 2007 in Criminal Case No. 1608 of 2005 at Kibera Law Courts)

JUDGMENT

The appellant was charged with offences set out in six counts. The first count was that of stealing by a person employed in the public service contrary to s. 282 of the Penal Code (Cap. 63, Laws of Kenya). The second count was fraudulent false accounting contrary to s. 330 (b) of the Penal Code. The third count was, again, fraudulent false accounting; and it was the same with the fourth, fifth and sixth counts as well.

Four witnesses were heard before a different Magistrate, **Mr. Oduor**, R.M.; and the appellant herein asked that hearing do proceed from that point; and the remaining four prosecution witnesses were heard before Senior Resident Magistrate **Mr. Maundu** who subsequently completed the proceedings.

The prosecution's case was that on divers dates between 10th September, 2004 and 30th September, 2004, the appellant herein who was a postal clerk based at Ongata Rongai Post Office, received deposits of money from the five complainants in counts 2 – 6 of the charges, who were account-holders of Postbank. The first complainant, Stephen Rongo, deposited Kshs.8,000/= and the carbon-receipt attached to his pass-book reflected the correct amount. However, the original receipt (which is the accounting document) was marked with the figure of only Kshs.800/=. The second complainant's accounting copy was also falsified to read Kshs.10,000/= instead of Kshs.60,000/=. The entry in respect of the third complainant was similarly falsified to read Kshs.200/= instead of Kshs.2,000/= which she had deposited. A similar falsification was done in respect of the fourth complainant, for whom the original document read Kshs.500/=:, but the carbon copy read Kshs.5,000/=. The same was done to the sixth complainant, who had deposited Kshs.4,000/=:, but the original record showed him to have paid only Kshs.400/=: . And on account of all these false entries, the Postal Corporation lost Kshs.67,100/=:, as stated in the first count.

The prosecution, in calling evidence, brought before the Court only three of the account-holders who were affected by the false accounting: **Monica Otieno Cheruiyot** (PW3) (count 2); **Moses Patrick Ambani** (PW4) (count 4); and **Cyprian Sheveka Rumwachi** (PW5) (count 5); and the appellant was acquitted at the preliminary stage in respect of the counts for which no evidence had been adduced.

PW3 identified the appellant herein as the clerk who served her on the material date, as did also PW4; PW5 testified that he had been served by a lady on the material date ? but he was not sure if it was the appellant herein.

In his findings, the learned Magistrate noted that there was no doubt, the sum of Kshs.67,100/= had been lost due to fraudulent false accounting. Similarly, there was no doubt that the appellant herein was an employee of Postal Corporation of Kenya which acts as an agent for Postbank.

Although the appellant had claimed she had been forced by her superior officer **Patrick Nzivo** (PW2) to make the false entries, as an accompaniment to love advances, she had not cross-examined PW2 in relation to such claims; and Pw2 denied ever asking the appellant to make the false entries. PW8, **Emmanuel Kenga** (the documents examiner) testified that the handwriting and signature on the false entries were those of the appellant herein.

The learned Magistrate concluded that:

“The evidence of the document examiner compliments that given by the other prosecution witnesses, that it is the [appellant herein] who authorized the disputed receipts. She is the one who falsified those entries.”

From the finding, the trial court thus found:

“... I am satisfied beyond reasonable doubt that the accused person committed the offences stated in count 1, 2, 4 and 5 and I accordingly convict her under s. 215 of the Criminal Procedure Code”.

The learned Magistrate treated the appellant herein as a first offender, and entertained her mitigation statement, before sentencing her to three-and-a-half years’ imprisonment on each count, these to run concurrently.

In her grounds of appeal, the appellant thus contends: that she was not working at the counter where the fraudulent accounting had taken place; that her superior officer had caused her to change her signature; that her superior officer had an interest of the nature of affection, in her, and so had a grudge when she did not yield; that she had no authority to account for receipt-books.

Much like in the grounds of appeal themselves, the appellant only touched on evidentiary matters, in her oral presentation; and she also hinted at deserts of a compassionate nature. She said she was not involved in fraudulent false accounting; she said he had reformed during the period she had been in custody; she said her children had dropped out of school while she was in jail; she said: “I will not commit such an offence, and if I do it I be sent to jail”.

Learned counsel **Mrs. Kagiri**, for the respondent, contested the appeal; she urged that the evidence adduced in Court pointed to none but the appellant, as the culprit. Both PW3 and PW4 had identified the appellant as the person who served them at the counter, on the days when the fraudulent false accounting took place. Pw8, the documents examiner had confirmed that the writings on the falsified documents were those of the appellant.

As regards sentence, **Mrs. Kagiri** urged that there was nothing on the record to warrant an interference by this Court, and the concurrent prison terms of three years-and-a-half were by no means harsh or excessive, as a punishment. Counsel noted that the maximum penalty for fraudulent false accounting was seven year’s imprisonment.

I have carefully considered all the evidence, as well as the manner in which it was appraised by the learned Magistrate. I have absolutely no doubt that the several customer-witnesses of Postbank gave unanswerable evidence identifying the appellant as the Postal Corporation employee who falsified entries, and, no doubt, drew benefits from such fraud. The documents examiner squarely identified the appellant as the person whose hand-writing and signatures adorned the falsified documents. She was rightly found

guilty and convicted. I am in agreement with learned counsel that the sentence imposed as penalty upon the appellant, was by no means harsh or excessive.

The appeal is dismissed. The conviction on the several counts is upheld; and the sentence imposed by the trial Court is affirmed.

Orders accordingly.

DATED and DELIVERED at Nairobi this 12th day of February, 2009.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court clerk: Huka

For the Respondent: Mrs. Kagiri

Appellant in person