



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL APPEAL 49 OF 2000

(Appeal against both conviction and sentence of the Resident Magistrate's court at Kericho, [D. ODITYO ESQ., RM] delivered on 6th January, 2000 in Criminal Case No. 1753 of 1999)

JANE MUTHONI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. Criminal Appeal

1. In the subordinate court Jane Muthoni was charged with the offence of stealing contrary to section 275 of the penal code.
2. The particulars of offence being

“ On 6th of July, 1999 Kericho Township in Kericho District within the Rift Valley Province jointly with others not before court stole cash Kshs. 12,700/= a cheque Kshs. 11,900/= and one identity card the property of Rebecca Wairimu Njau”.

3. She pleaded not guilty and a trial commenced on 3rd September, 1999. The said accused was convicted after trial to a term of two years imprisonment on 6th January, 2000.

II: Appeal - Delay

4. She filed an appeal on the 24th July, 2000. At the High Court at Kericho. No appeal had been heard. This is one such case as for nine years this said appeal had never been given a hearing date.

5. There has been no explanation as to this.

III: Appeal

6. The appellant in her appeal pleaded leniency and how she had family difficulties with children including one physically challenged child. She prayed that the appeal be considered.

IV: Facts

7. The complainant herein PW1 was staying at the Kiriso in Molo where she was a business woman. On the 6th July, 1999 at 2.00p.m she was walking from along the co-operative Bank at Kericho Township to the stage when she met the accused person who was with another not before court. They sought for direction to hospital. She did not know but the two began to converse. This led to identifying the other lady as a Tele Evangelist healer. They persuaded the complainant to move to one area and sat her down. They managed to leave a handbag behind whilst one of them went away. She was asked to leave her bag and on return she found both ladies had gone. She had Kshs. 12,000/= cash and Kshs. 11,900/= as a cheque. A dress, calculator a scarf and socks in the bag.

8. She made a report to the police station.

9. About nine days later the complainant was called to the police station and identified the accused as one of the ladies. The man with her had been introduced to her as a driver.

10. The police went and made a search to where the accused led them. Nothing was received save the cheque for Kshs. 11,900/=.

11. The accused was accordingly charged.

12. The arrest of the accused was as a result of informers notifying the police that the accused was a con-woman. She was arrested by PW3. PW2 a police constable who accompanied the accused to make a search in the house.

13. In her defence the accused denied that she took the complainant's moneys.

14. The trial magistrate found her guilty and convicted her of the offence.

V: Appeal

15. The evidence before court is overwhelming against the accused. The charge of stealing should have really been one of obtaining by false pretence and or cheating. Nonetheless since a handbag, items within the bag were stolen the offence of stealing is sufficient.

16. I hereby find that the conviction is safe and reliable.

17. As to sentence of two years imprisonment, the same is upheld as not being manifestly excessive.

18. The appeal stands dismissed.

DATED this 14th day of July, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

P. Kiprop – state counsel instructed by the Attorney General for the Respondent

No appearance for the Appellant