



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 169A of 2006

GEORGE MWANGI KARUGA .....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(From the original conviction and sentence in Criminal Case No.2183 of 2001 of the Chief*

*Magistrate's Court at Nairobi by M. A. Odero – S.P.M)*

J U D G M E N T

The appellant George Mwangi Karuga together with two others were jointly charged with 15 counts of stealing contrary to section 275 of the Penal Code. The alleged theft was committed against Kenya Veterinary Vaccines **Production Institute (KEVEVAPI)**. The prosecution called 14 witnesses in establishing the offence against the appellant. From the outset the appellant denied that he received monies that are alleged to have been stolen from the complainant. It is alleged that sometimes between early 2000 to 2002 there was acute shortage of water which led to rationing of water in several areas within Nairobi area. **KEVEVAPI** as an institute which was involved in manufacture of vaccines desperate for constant water supply to be maintained so that vaccine production could continue uninterrupted. It appears an approach was made to Nairobi City Council to supply the institute with extra tankers to boost its water supply. The case of the prosecution is that the appellant and two others manipulated the situation by hatching a plan where some of Kshs.820,000/= for supply of extra tankers of water by a company called **Mecol Plumbers** in which the appellant is the central player for water which was never actually supplied to the institute. The method used was by filing in several internal reimbursement claim vouchers payable to various staff members. The vouchers passed through several stages before payment could be effected. It is clear that all the procedures used for payment of vouchers were followed. The MD of the institute approved the final payments and as a result he was also charged together with the appellant but he was acquitted for lack of evidence. It is alleged as at the time of the said fraud the appellant was an employee of Nairobi City council. It is also alleged that once vouchers were approved for payment by the relevant persons, cash would be paid to a particular employee who would then forward the money to the appellant who was the proprietor of **Mecol Plumbers** even though in actual fact no water was supplied to the institute.

The evidence of PW3, the internal auditor of the institute was that several reimbursement vouchers were filled out and approved to effect payment for the alleged extra supply of water to **KEVEVAPI**. This reimbursement claim vouchers were internal documents ordinarily used to reimburse **KEVEVAPI** staff for expenses they might have incurred in course of their duties. According to the court records all the relevant reimbursement forms for various amounts in the 15 counts of the charge sheet were produced and properly identified by various witnesses who gave evidence in support of prosecution case. The various officers from **KEVEVAPI** in whose names the vouchers were filled have all testified in court i.e. **Caroline Gichuhi (PW6) Humphrey Itotia (PW9) and Joel Misoi (PW14)**. The said witnesses confirmed that the payment vouchers were prepared in their names for the various amounts. All the witnesses also confirmed that they were not making genuine claims for reimbursement for claims they incurred when they were on duty.

It is the case of the prosecution that the payment vouchers were prepared and approved to facilitate the

withdrawal of cash in order to pay for the so called water supply to **KEVEVAPI**. It is clear that all the payment vouchers produced in court were filled out and duly processed as was required in the internal mechanism and machinery of the complainant. The vouchers were verified by the relevant officers and were all finally approved for payment by the Managing Director of **KEVEVAPI**, **Dr. Kinyili** who was acquitted for lack of proper evidence.

As was pointed out by the trial court all the monies paid out as a result of reimbursement vouchers was money illegally misappropriated from **KEVEVAPI** as it was money paid out for goods that was never actually supplied to the institute. However, the question is whether the stealing of the money can be attributed to the appellant. There is no evidence that the appellant was the final beneficiary of all the funds misappropriated from the institution. All the witnesses do confirm that there was no money that was paid directly to the appellant. It was incumbent upon the prosecution to show that the appellant was the one who signed the payment vouchers and ultimately received the monies indicated in each particular payment voucher. In essence it was necessary to show the nexus between the reimbursement vouchers between the members of staff that went through the right channels and the appellant who was not a member of staff of **KEVEVAPI**. A casual reading of all the payment vouchers clearly indicate the recipient of the said money and some of the recipients who were prosecution witnesses did not deny that they received the money. In essence the said witnesses were either directly or indirectly involved in the theft of funds against the complainant. The law is that an accused person cannot be convicted on the basis of evidence tendered by an accomplice. And in so far as the basis of the appellant conviction was evidence tendered by persons who may have abated and/or directly involved in the theft, then it would be unsafe to rely on such evidence. It is clear from the evidence that the payment vouchers passed through several stages before payment could be effected. All the procedures used in payment vouchers as required in internal mechanism of the complainant were dully followed. The Managing Director of the institute who was a co-accused of the appellant was acquitted for lack of sufficient evidence.

The totality of the prosecution evidence is that there was no evidence to convict the appellant for the offence of theft since no nexus was established between the roles played by the appellant and members of staff of the complainant in effecting payment which was duly approved by all the relevant persons that were concerned in the protection of the said funds. It is true that the whole transaction smacks of suspicion that the appellant may have been involved in the said theft. However, suspicion however strong is not a basis of conviction. In my understanding the appellant has no duty to show his innocence or that he had no role in the theft that was committed against the complainant. In short the offence of stealing was not proved to the required standards making the conviction of the appellant unsafe.

In conclusion it is my view that the appellant was convicted on insufficient evidence since the prosecution did not prove its case beyond reasonable doubt. I therefore, allow the appellant's appeal, quash his conviction and set aside the sentence that was imposed by the trial court. The appellant was and is entitled to an acquittal.

**Dated, signed and delivered at Nairobi** this 10<sup>th</sup> day of November, 2008.

**M. WARSAME**

**JUDGE**