

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 97 of 2006

CHRISTINE ASWAN LKUKOKO:.....APPELLANT

VERUS

REPUBLIC:.....RESPONDENT

J U D G E M E N T

CHRISTINE ASWAN LUKOKO the appellant herein was convicted by the Senior Resident Magistrate (MK.N. NYAKUNDI) for the offence of stealing contrary to Section 275 of Penal Code. She was sentenced by A.B. MONGARE (Resident Magistrate to two and a half (2 ½)years imprisonment. Particulars of that offence was that on the 11th July 2006 at West Indies Estate in Eldoret Town she stole Shs.100,000/= the property of **MARGRET MUTHEMBA**.

The appellant had also been charged with a second count of handling stolen goods contrary to S. 322 (2) of Penal Code but the court in its judgment did not deal with that count. It never said whether applicant was convicted or acquitted of that offence. However that charge is not now the subject of this appeal.

The prosecution case was that appellant had been employed by the complainant (PW1) as a house maid for sometimes before she left and another over - Sofia Ongeche -(pw2) employed. On the material day at 11 am appellant went to the complainants house. the complainant was away at her place of work. Only Sofia (PW2) and a baby were there. Accused told PW2 that she had been sent by the complainant. She had keys to the bedroom. She opened the bedroom and went inside. PW2 saw her pull the drawers and take a white envelope. She left. Later in the evening when the complainant returned PW2 told her what happened. She went into the bedroom and checked the drawer where she had left Shs.100,000/= in envelope. The money was missing. She telephoned her husband and they suspected it was the appellant who had stolen the money.

PW1 reported the matter to the police. Next day police traced appellant and she was arrested. PW2 identified her when she was taken home. Also police went to her home and searched it. She found clothes and other items belonging to the complainant. The money however was not found. She was charged.

In defence the appellant said the clothes found in her house were given to her during Christmas. She denied stealing the money. She said complainant had sworn to revenge when she fired her.

This being a first appellant court I have carefully considered and re-evaluated the sentence. PW2 Sofia said she clearly saw the appellant remove a white envelope from the drawer in the complainants bedroom. this was the drawer where the money was. It was at 11 a. m in broad daylight. Appellant was therefore properly identified by PW2. That identification was positive. Apparently the appellant had a duplicate key to the bedroom which she used to open the door and steal the money.

Thus I find the evidence on record was clear and the court properly convicted the appellant. I therefore uphold the conviction.

As to the sentence of two and a half years imposed though lawful, I find the court did not consider the circumstances properly. As stated appellant was convicted by **M.N. NYAKUNDI (SRM)**. After

conviction the prosecution asked the court to treat appellant as a first offender. In mitigation she said she had three children, was remorseful and that she will settle the amount stolen. The court then ordered for a probation report. A probation report was presented to **A.B. MONGARE (RM)** who did the sentencing. The report was favourable but the court took the view that appellant was not sincere and therefore cannot benefit from probation and sentenced her to 2 ½ years. I presume she said appellant was not sincere because she had said she could not get the amount of money to compensate. With respect there was no basis on which this conclusion was made. The court had not in the first place made a specific order that the appellant compensate the complainant. Further the fact that she said she could not raise the amount did not mean she was not sincere. It was quite possible that she genuinely could not raise the amount. The trial magistrate did not ask for a probation report just because the appellant had said she will settle the amount. She had said she was remorseful and had three small children a fact confirmed in the probation report. Thus the view taken by the sentencing magistrate was not proper. Once a favorable report was presented she should have considered putting her on probation unless there were very good reasons. There were no good reason and certainly the fact she said she could not get the amount was not one.

In the circumstances I allow the appeal against sentence and set aside the sentence of 2 ½ years imposed. Since the appellant has already served over 1 ½ years of the sentence imposed I find that that is enough punishment. I therefore substitute the sentence with one of the period already served. Appellant be set at liberty forthwith unless otherwise lawfully held.

Dated and Delivered at Eldoret this 21st day of June,2007

KABURU BAUNI

JUDGE