



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL APPEAL 649 OF 2003

JOHN MBURU MUIRURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant, JOHN MBURU KAMAU was convicted for the offence of GIVING FALSE INFORMATION TO A PERSON EMPLOYED IN THE PUBLIC SERVICE contrary to Section 129(a) of the Penal Code. In the second count, he was convicted of OBTAINING BY FALSE PRETENCES contrary to Section 313 of the Penal Code.

Lastly he was convicted for the offence of JUMPING BAIL contrary to Section 121(1) of the Penal Code. He was sentenced to serve two years imprisonment in the first two counts and six months imprisonment in the last count with prison terms running concurrently. The Appellant was aggrieved by the convictions and therefore lodged this Appeal. In his petition of appeal, the Appellant raised four grounds.

1. That the learned trial magistrate erred in law and fact in convicting without tangible evidence. 2. That the learned trial magistrate erred in law and fact in convicting on non existence evidence. 3. That the Appellant's defence was not given adequate consideration. 4. That the sentence of six months for jumping bail was unsafe as the medical documents he produced were never investigated.

The Appeal was opposed. MISS NYAMOSI learned counsel for the State depended on the evidence on record to support the convictions and sentences imposed. The facts of the prosecution case were that the Appellant through Widespread Insurance Agent applied for and obtained a short term cover for a vehicle which was unregistered. PW1 from Apollo Insurance company, said that the cover was issued to the Appellant on 7th December 2001 to cover vehicle chasis No. A100 -3124667. The Appellant then reported that the said vehicle was involved in an accident at Makindu along Mombasa Nairobi Road on 8th December 2001.

Loss assessment was carried out by PW8 on 18th December 2001 and a report made which was exhibit 1. The Appellant was paid and a discharge voucher dated 7th January 2002, Exhibit 2 was issued. PW7 said further that the Appellant applied and was allowed to buy the salvage vehicle at Kshs.150,000/-. The final payment made to him was Kshs.260,000/-. The salvage was then released to the Appellant by PW2 of Auto Services on 9th January 2002.

On 11th January 2002 the Appellant approached I.C.E.A. through their agent Widespread Insurance to insure the same vehicle chasis No. A100-3124667 for 30 days for Kshs.500,000/-. He paid Kshs.10,000/-

for the cover. Then PW4 also from I.C.E.A. received a report on 21st January 2002 that the same vehicle had been involved in an accident along Thika Road near Roasters. The accident took place on 18th January 2002 and the claim made on 21st January 2003 as per form exhibit 12(a). The police abstract was issued to the Appellant by PW5, PC SIRMA on 8th February 2002. It was exhibit 9.

Eventually, PW4 said, the Appellant was paid Kshs.455,000/- for total loss of the said vehicle. Assessment report was exhibit 10 and discharge voucher exhibit 11. Assessment was by PW6. PW4 said that in March 2002 he received information following which he started investigating. In June 2002 he got their file in respect of A100-3124667 and they reported to police. PW4 said they realized that I.C.E.A. had insured a salvage. It was the prosecution case that the two assessors, PW6 and PW8 were given their reports exhibit 10 and exhibit 1 respectively. They agreed that each report was made in respect of the same vehicle with same damage. Exhibit 1 by PW8 was dated 18th December 2001 and that of PW6 was dated 25th January 2002. The vehicle was a total write off in both reports. The damages according to both reports were exactly the same.

On the first ground of appeal that there was no tangible evidence in the case. I have re-evaluated the entire evidence before the trial Court. As summarized in this judgment, the evidence before the Court is overwhelming that the Appellant insured the vehicle. First he insured with Apollo Insurance Company and was paid for an accident in which the vehicle became a total write off in December 2001. In January 2002, hardly a month after, he insured the wreckage with I.C.E.A. without disclosing that fact. Then the Appellant reported an accident with it out of which he was paid for total loss.

The false accident report and the false claim for payment on the wreckage on pretences his vehicle was damaged in the second 'accident' are the subject matters of the charges facing the Appellant. The learned trial magistrate had sufficient evidence before her to find that the accident the Appellant reported to PC SIRMA PW5 was false. Consequently his claim for payment and final payment to him by I.C.E.A. based on the 'false accident' was fraudulent and the learned trial magistrate was right to convict him for both offences. I find no merit in the first ground of Appeal. The Appellant's second ground is that there was non-existent evidence. That is far from the factual situation. The evidence before the Court was overwhelming against the Appellant.

On the Appellant's claim that his defence was not given due consideration, I have perused the judgment of the trial magistrate. Not only was the defence analyzed, the defence case was given due consideration at J5, J6, J7, J8, J9, J10 before it was rejected. The Appellant's claim that it was not considered is therefore not correct. Finally the Appellant challenged his sentence of 6 months for jumping bail. The sentence was proper and cannot be interfered with.

Having considered this appeal, I find that the learned trial magistrate's finding cannot be faulted and that the conviction was safe. I uphold the convictions and confirm the sentence. The upshot of this appeal is that it is dismissed.

Dated this 8th day of June 2005.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

LESIIT, J.

JUDGE