

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 373 OF 2001

(ORG CR. C. 305/01 (KRT

PAUL MUTUNGA MUSAU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant was charged in the Resident Magistrate's court Karatina in two counts of forgery c/s 349 of the Penal Code and in two counts of stealing c/s 275 of the penal code.

He was acquitted on the charges of forgery and convicted on the charges of stealing. He was sentenced to serve 2 years imprisonment in each count. The sentences are to run concurrently. This appeal is against both conviction and sentence. The forgery charges related to contain transfer of money letters purportedly written and signed by the Jua Kali infrastructure Project signatories. The first letter dated 24/5/99 authorised the appellant to transfer Kshs.600,000/- to Meru Branch of Barclays Bank and to be paid to one BEN JERMYN MUROKIH in identification. The second letter 2/6/99 authorised the appellant to transfer Kshs.350,000/- to the same destination and to the same person.

It is apparent from the proceedings that the members of staff at Barclays Bank Meru did not follow the instructions regarding the paying out of the money. In his judgment the learned trial magistrate found that the members of staff who paid out the money at Barclays Bank Meru were either negligent or acted fraudulently. If the bank officials did not follow the instructions given by the appellant how can it be ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,that the appellant stole the money unless it is proved that there was a conspiracy between the appellant and the bank officials in Meru? It is clear that the appellant transferred the money in the course of his duties as a Bank Manager.

Stealing is defined in S. 268 of the penal code was not proved. The learned state counsel conceded the appeal. I allow the appeal. I quash the conviction and set aside the sentence. The appellant be set at liberty.

Dated this 9th day of January 2003.

J.K. MITEY

JUDGE