

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO.686 OF 2002

**From Original Conviction(s) and Sentence(s) Criminal Case No.1823 of
1999 of the Resident Magistrate's Court at THIKA**

DANI GITHINJI NJOGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of stealing by servant c/s 281 of the Penal Code and sentenced to serve two years imprisonment. This appeal arises from that conviction.

The appellant was employed by the Housing Finance Company of Kenya Limited as a Chief cashier. In the month of January, 1999 he failed to report on duty. He also did not spend a night at his home. This compelled his wife to take the keys to his office. However the appellant had duplicate keys. When the safe was opened the balances were checked and a shortage noted. This was confirmed by pw1 pw2 and pw3. After his arrest the appellant recorded a statement with the police and confirmed the missing money. He also mentioned several people to whom he gave kshs. 2.5 million. His defence is instructive. He intended to refund the money. That is not a defence in a case of theft.

In my judgment the offence was proved beyond doubt. The sentence of 2 years was lenient. I have been asked to enhance the same. However, no notice was served upon the appellant. I decline to do so.

This appeal is accordingly dismissed.

Order accordingly.

MBOGHOLI MSAGHA

JUDGE

19/2/2003