



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL ON. 444 OF 2000

(From original conviction and sentence in Criminal
Case No.1405/2000 of the Principal Magistrate's
Court at NYAHURURU - C. M. SIFUNA (R.M.)

JEMIMAH WANGUI KIHARA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant Jemimah Wangui Kihara was convicted of the offence of theft by servant c/s1 of the Penal code and sentenced to two years imprisonment. It had been alleged in the particulars of the charge that she, together with her co-accused, stole Kshs. 600,000 the property of Kenya Women Finance Trust who was her employer.

Aggrieved by the said conviction, the appellant lodged this appeal. The evidence adduced showed that the appellant was an employee of Kenya Women Finance Trust and at the same time the chairlady of a women Group that applied for a loan from that trust. The said loan was duly processed, cheque issued and banked into the women group's account, some withdrawals were in fact made from that account.

Some evidence was led as to the existence of two women groups known as "Rainbow sea" and "Rainbow C" respectively. The two had different officials but the issue remained clouded even at the end of the trial as the trial court did not resolve the same. That however is not material because the main issue here is whether the prosecution proved that the appellant stole the money belonging to the complainant.

Once the Trust approved and paid out the money to the women group as a loan, it (the trust) ceased to be the owner of that money. The women group was at liberty to use the money for the intended purpose and the only interest the Trust retained was to see that the loan was repaid.

The Trust had no locus to file a complaint as it was not the owner of the money. It cannot be sustained therefore to claim that the trust is a complainant. The women group did not file any complaint against the appellant.

It also transpired that employees of the Trust were not allowed to belong to any groups that would apply for financial assistance from Trust. Such Rules and regulations were introduced but that was after the transaction complained of came into effect. Whatever the case, breach of the rules is not a criminal offence

Finally, there was evidence that The Kenya Women Finance Trust had filed a civil case against the

Women group that had been advanced the money again confirming that there was nothing criminal in the matter.

The learned counsel for the republic concedes this appeal and with respect, rightly so. It follows that this appeal must succeed.

Accordingly, this appeal is allowed, conviction quashed and sentence set aside. The appellant is out on bail pending the determination of this appeal. The terms of her release are now vacated and surety discharged.

Orders accordingly.

Dated and delivered at Nairobi this 17th day of March, 2003.

MBOGHOLI MSAGHA

JUDGE