

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 170 OF 2001

**(From original conviction and sentence in Criminal
Case No.970/200 of the Senior Resident Magistrate's
Court at NAROK –W.O. LICHUMA(S.R.M.)**

SIMON KINYUA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

I have read the proceedings from the trial magistrate's court in light of the submissions before me during the hearing of this appeal.

I find that there was sufficient evidence that PW.1 James Ndirangu Nderitu gave the Appellant, then PW.1's employee, Kshs.35,000/- to go and bank. The Appellant did not bank the money. Instead he disappeared with the money thereby absconding from his employment at the shop of P.W.1 until the Appellant was arrested by the police to whom P.W. 1 had reported the matter. The Appellant was subsequently charged with the offence of stealing by servant contrary to Section 281 of the Penal Code.

His inconsistent defence was properly rejected in the light of the evidence adduced by P.W.1, P.W.2 and P.W.3 which showed that the Appellant had even disappeared before the theft was discovered.

He was properly convicted and as the sentence of eighteen months imprisonment was not excessive, this appeal is hereby dismissed in its entirety.

Dated this 1st day of August, 2003.

J. M. KHAMONI

JUDGE