



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 410 OF 2002
(Being an appeal from original conviction and sentence in criminal
case 768 of 2002 of the Chief Magistrate's Court at Mombasa)
GONA RIMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Gona Rimba, the appellant, was convicted of the offence of Stealing by Servant contrary to Section 281 of the Penal Code and was sentenced to serve a total of three years imprisonment on the 13th September 2002. The case against him was that on 4th March 2002, while he was at Akiba Bank along Digo Road, Mombasa, he stole cash Sh. 22,000/= belonging to his employer one Abdulshakoor M Hashim (pw.1). He is again said to have stolen another Sh.4,000/= on the 8th March 2002 from the same employer, which came into his possession by virtue of his employment as a shop assistant.

Evidence adduced by the prosecution was that the appellant had been employed by PW1 as a messenger and that he would occasionally be sent to Akiba Bank to deposit money into the account of the business. On the 4th March 2002 he was given a total of Sh.22,000/= to go and bank at Akiba Bank. He gave PW1 thereafter banking slips. However when PW1 did the reconciliation of the account, he discovered that no money had been reflected to have been banked in the said account. During investigations the banking slips which the appellant allegedly gave to PW1 were found not to be those in use at Akiba Bank. It was suspected that the appellant pocketed the Sh. 22,000/= and then forged the bank paying slips to reflect an alleged deposit of such money into PW1's account.

Miss Kwena, learned State Counsel, did not support the appellant's conviction because of insufficiency of evidence. The police investigators only took the bank stamp in use at Akiba Bank for investigation and examination by the document examiner. They ought also to have taken the specimen handwriting and signatures of the appellant and of Peter Mwangi PW3 the cashier at Akiba Bank Ltd to the document examiner to determine who actually forged the bank deposit slips which the appellant gave to PW2. The omission to do so created a doubt as to the guilt of the appellant. I agree with this submission.

Consequently the appellant's conviction was unsafe and the same is quashed, sentences are hereby set aside. The appellant is to be released from prison custody unless he is otherwise lawfully held. It is so

ordered.

Dated and delivered this 30th September 2003.

A.G.A. ETYANG

JUDGE

Delivered this 30th September 2003 in the presence of Miss Mwaniki for Respondent and Appellant in person. Mr Sango court clerk.

A.G.A. ETYANG

JUDGE

30.9.2003