

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 421 OF 2002

(From original conviction and sentence in Criminal Case No. 830 OF
2001 of R.M.'S Court at Gichugu – J.N. MUNIU – R.M.)

EPHANTUS MUCHIRI MAGUAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

Ephantus Muchiri Magu (hereinafter referred to as the Appellant) was tried and convicted jointly with two others for the offence of stealing contrary to Section 275 of the Penal Code by the District Magistrate Gichugu. He was sentenced to serve 2 years imprisonment . He has now appealed against his conviction and sentence.

The particulars of the offence against the appellant and his co-accused were that on the night of 16th and 17th November, 2001 at Gathoge village they jointly stole Kshs. 46,300/- the property of Agnes Wawira Ileri. Briefly the prosecution evidence in the lower court was as follows.

On 16th November, 2001 the Appellant went to the house of the complainant Agnes Wawira Ileri and informed her that her husband had gone to Mwea accompanied by 2 girls and that he intended to go to Nyeri to collect money. The complainant was alarmed as they had just sold a piece of land and had received part of the money and there was yet a balance of Kshs.80,000/- to be paid. She was therefore apprehensive that her husband would collect this money and squander it. She took Kshs.47,000/- part of the proceeds of sale which she was having in the house she went with the appellant to the house of her sister. She found both her sister and her husband who were(Accused 2 & 3 in the lower court). She gave Kshs. 46,300/- to her sister to keep for her whilst retaining 700/- for her fare. She was then accompanied by the Appellant and her sister's husband to Mwea .They pointed out to the complainant the bar where her husband was and remained outside whilst the complainant went into the bar. The complainant found her husband with a lady and another man. After quarrelling with her husband she went back where she had left the Appellant and her sister's husband only to find them gone.

She got a lift and went back to her sister's house only to learn that the appellant and her sister's husband had gone back to the house and collected the money that she had left with her sister cheating her that the complainant needed the money as she had been arrested. The complainant went and reported the matter at Gathoge Police Patrol Base.

Later the Appellant was arrested and Kshs.2,310/- recovered from him.

In his defence the appellant denied having stolen any money from the complainant . He testified that his co-accused borrowed 2,000/- from him to assist the complainant. His co-accused also denied the charge and confirmed having borrowed Kshs.2,000/- from the appellant.

On this evidence the trial magistrate found that the complainant left her money with her sister for safe custody but that the appellant and the complainant's brother in law deliberately left her in Mwea and came back for the money and that since the complainant's sister did not give a satisfactory explanation as to what happened to the money she must have participated in the theft.

Learned State Counsel Mr. Obuo has conceded the appeal contending that the evidence in respect of the theft was not sufficient and that the money recovered from the appellant was not linked to the stolen money.

I have reconsidered and re-evaluated the evidence which was before the trial magistrate. The complainant explained in detail how the appellant induced her to go to Mwea to pursue her husband. The complainant explained that she left her money and child with her sister. Although the sister denied that the complainant did not leave any money, the trial magistrate who saw the witnesses and assessed their demeanour believed that the complainant spoke the truth that she left Kshs.46,300/- with her sister. It is evidence that the appellant, the complainant's brother in law and sister, all of whom knew that the complainant had money, had sinister motives, that is why they abandoned the complainant in Mwea and cooked up the story that she had been arrested. It is true that the kshs.2,310/- recovered from the appellant could not be directly linked to the stolen money, this however does not prove that the appellant did not steal the money.

I am satisfied that there was clear evidence that the appellant and his co-accused colluded and stole Kshs.46,300/- from the complainant. The appellant's conviction was therefore proper. The sentence imposed of 2 years was not so excessive as to warrant the intervention of this court.

I do therefore find no merit in this appeal and do dismiss it in its entirety.

Dated Signed and Delivered at Nyeri this 18th day of December 2003.

H.M. OKWENGU

JUDGE