



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.1238 OF 2002**

**(From Original Conviction and Sentence in Criminal case  
No.1214 of 2000 of the Chief Magistrate's Court at Nairobi**

**JOHN MARTIN ODINGI MITO..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

The appellant was convicted and sentenced by Thurania Esquire on 16/10/2002 on one count of stealing contrary to section 275 of the penal code. The particulars of the charge were that between the 16th day January and the 25th June 1999 at Barclays Bank Harligham Branch in Nairobi Area jointly with others not before the Court stole KSH.352,000/= the property of Kenya Premier League the appellant was sentenced to three years imprisonment on count one. The appellant was however acquitted on several other counts after the trial.

In his memorandum of appeal appellant has challenged his conviction without the existence of the evidence from the document examiner and that the complainant did not testify as a witness. He also challenged his conviction arguing that the charge was not proved and that the conviction was based on contradictory evidence. The appellant has further submitted that he was refused to make submissions after the conviction of his trial. The appellant was represented by Mr. Ogola on appeal.

From the evidence given the appellant was alleged to have stolen sponsorship money amounting to Ksh.352,000/= belonging to Kenya Premier league. This money was sponsorship money received for the football league by the sponsors namely BAT KBL and BAT It was argued that there was one evidence on record from any person who represented Kenya Premier league the complaint. This means that nobody gave evidence to prove that money was stolen from KBL, BAT or from any other sponsors. There was no representative from the sponsoring companies nor from Arena Development Company to prove that any money was stolen from these organizations. According to Mr.Ogola there is no such organizations as Kenya Premier League as the charge sheet states. Failure to produce the counterfoil cheques of the cheques recovered from the bank has also been questioned by the defence counsel who has argued that this was prejudiced to the defence case.

According to Mr. Ogola only two signatories were called to give evidence out of the seven signatories to the account where the appellant is said to have stolen funds from. It was necessary to call evidence from all the signatories; so that they could confirm whether or not they are the ones who signed the questioned cheques.

Mr. Monda fro the state agreed with the submissions raised by Mr. Ogoka for the appellant. He admitted that the appellant's conviction was not proper as it was not based on congen evidence. My perusal of the learned trial magistrate's record tends to confirm the defence counsels submissions as supported by the state counsel. The appellants defence to the effect that he was lawfully entitled to these funds would appear to be plausible. It would appear that the appellant was entitled to the sum he is alleged to have stolen as his lawful payment from KFF.

I have no reason to disagree with both Mr. Ogolla and the state counsel that the appellant should have been given the benefit of doubt in this case just like his co-accused was. I have noted that the appellants co-accused was acquitted without adequate reasons being given by the trial magistrate in her judgement as to why he was acquitted.

I therefore uphold the appellants appeal I quash the conviction and set aside the sentence imposed upon the appellant.

Order accordingly.

R.M. MUTITU

JUDGE

28/3/2003

Delivered, dated and signed in the presence of the appellant and in the presence of Mr. Monda for the state.

R.M. MUTITU

JUDGE

28/3/2002