



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 588 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 1129 of 1999
of the Chief Magistrate's Court at Mombasa -B. Malomba –S.R.M.)

RONALD WANJE APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G E M E N T

The Appellant RONALD WANJE was the original 1st Accused in the main trial where he was charged together with two others with the 3 counts of making a document without authority contrary to Section 357 (a) and one count of stealing by servant contrary to Section 281 of the Penal Code. They were all convicted on all counts and Sentenced to Serve 2 years imprisonment on each count.

He then preferred the appeal herein and cited 12 grounds. At the time of the hearing of the appeal he was out on Bail.

The brief facts are that on the 29th March, 1999, WAITER SEIF an Auditor with the Municipal Council of Mombasa discovered that some fake receipts were in issue and reported the matter to the police who after investigations recovered various fake receipts numbers T.747687, T747695 and 747986. Some of the receipts were in possession of RAMADHANI MWAHANJI (PW2) who had gone to pay for licence and refuse collection fees on behalf of his employer PWANI OIL PRODUCTS. The other receipts were recovered through KASIM SALIM (PW4) who in his evidence said he made the payments to the appellant who in turn issued him with the receipts. The receipts were confirmed to be fake by MILLIE MOHAMED WANDE (PW6) a cashier with the Municipal Council who confirmed she had not issued the receipts, her signature had been forged and that the receipts were not the genuine ones she has been issuing on behalf of her Employer. This position was also confirmed by SP. EMMANUEL LENGA (PW7) who is a document examiner.

IP. GIDEON NYALE MUNGA (PW9) was the investigating officer and had recovered some fake plain receipts in the printing office where the appellant worked. The appellant denied knowledge of the same saying there were several employees in that office and everyone could have left them on the table. He was arrested and charged with the offences.

In his defence, he gave an unsworn defence and repeated what he had told PW7 during his arrest. In her

judgement the learned magistrate found that the Appellant was involved in the making of the receipts as well as stealing from his employer.

The State Counsel did not support the conviction and charge on the ground that the evidence adduced did not proof the Appellant was the maker of the documents.

I have read both the proceedings and judgement and heard the argument in support of the Appeal. From the evidence there is no doubt the receipts were indeed fake and that consequently money belonging to the Municipal Council was stolen. The question is whether the Appellant was the author or participated in the commission of this crime?

The main evidence has been analyzed and no evidence did point to the Appellant as the author of the forged receipts. No handwriting samples from Appellant were compared to those on the receipts. However there was evidence that it was him who received the money and handed over the receipts to PW2 and PW4. No evidence was adduced to show that the Appellant at that stage was aware the receipts were fake and Revenue was lost.

There is a possibility that he indeed was aware. However with due respect the investigation into the offences herein was not conducted to it's best and as a result loopholes left open can only be to the benefit of the Appellant. I do not however hesitate to warn him that he may not be so lucky next time round if he was in anyway involved.

In the circumstances the Appeal shall succeed. The Conviction and Sentence are set aside.

Dated and delivered at Mombasa this 26th day April, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE