



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL APPEAL NO. 921 OF 1998**  
**(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 3271 OF 1995**  
**OF THE**  
**FIRST CLASS DISTRICT MAGISTRATE'S COURT AT NAIROBI**  
**CHARLES ONYONO OYUGI.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged jointly with 4 others with the following offences:

1. Conspiracy to defraud contrary to section 317 of the Penal Code
2. Attempting to steal contrary to section 275 of the Penal Code as read with section 389 of the Penal code.
3. Stealing contrary to section 275 of the Penal Code.
4. Stealing contrary to section 275 of the Penal Code.

After these, the appellant and Mr Titus Wambua Mwangi were committed as charged and fined Kshs 10,000/= on each count. This appeal is against both conviction and sentence. The appellant was at the material time an employee of the Kenya Post and Telecommunications Corporation and was based at City Square in the parcels. On 30.8.95 at about 5 p.m. the appellant presented cheque No. 007064 for Kshs 63,746/70 to PW5. The cheque was for payment of telephone Bills. The appellant informed PW5 that he had been given a cheque by a friend so that the appellant could pay on his friends behalf. The cheque was drawn in the Account of the Ministry of Public Works. It turned out that some of the telephone numbers for which payment was being made through the said cheque were private.

I have considered the appeal. As regards the first count of the charge sheet there is no evidence that the appellant conspired with his co-accused to convert cheque Number 007604 to pay telephone bills for private telephone numbers. No link was established that could have extended between any of the accused persons. Similarly there was no evidence that the appellant attempted to steal or that he stole any of the cheques indicated in the charge sheets. It was not disputed that - employee of the Kenya Posts and Telecommunication Corporation could pay for a telephone bill on behalf of a private individual. The contention by PW11 Margret Jane Auma that she paid Kshs 10,000 to the appellant so that he could arrange for reconnection of her telephone line was not supported by any tangible evidence. In her testimony PW11 said she had the original bill, while PW14 I.P. Peter Mungai stated that he did not recover the bill as PW11 allegedly told him the appellants had it. I find that the prosecution case was not proved beyond reasonable doubt. The Conviction of the Appellant was unsafe. I allow the appeal quash the conviction and order that the appellant be set at liberty.

Dated this 6th day of July 2000.

**J. Mitey**

**JUDGE**

**JM/nn**