



REPUBLIC OF KENYA



**Koros v Republic (Criminal Appeal E002 of 2022)  
[2025] KEHC 9166 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9166 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E002 OF 2022**

**JR KARANJA, J  
JUNE 12, 2025**

**BETWEEN**

**MERCY CHEPKOECH KOROS ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Conviction and Sentence on Judgment  
delivered on 27th January 2022 by Hon. E.W. Karani, Senior  
Resident Magistrate in Kericho CMCR CASE NO. 544 of 2022)*

**JUDGMENT**

1. The Appellant, Mercy Chepkoech Koros, stood Accused before the Resident Magistrate at Kericho for the offence of stealing by servant, Contrary to Section 281 of the *Penal Code*.  
It was alleged that on diverse dates between 28<sup>th</sup> January 2020 and 30<sup>th</sup> January 2020, in Bureti Kericho County, being a servant to John Kipkoech Maritim, the Appellant stole a sum of Kshs. 441,000/- the property of the said John Kipkoech Maritim which came into her possession by virtue of her employment.
2. Upon her plea of not guilty, the Appellant was tried, convicted and sentenced to serve two [2] years imprisonment. However, being dissatisfied with the conviction and sentence the Appellant preferred this appeal on grounds set out in the petition of appeal dated 7<sup>th</sup> February 2022 and filed herein on her behalf by Enoch Anyona Miruka & Company Advocates.
3. Basically, the Appellant complains that the trial court erred in law and fact by convicting her on the basis of prosecution evidence which was insufficient and unreliable. That, the trial court took into account extraneous matters in disregarding and dismissing her defence.



4. At the hearing of the appeal by way of written submissions the Appellant was represented by learned counsel, Mr. Miruka, while the State/ Respondent was represented by the Office of the Director of Public Prosecutions [ODPP] which opposed the appeal and prayed for its dismissal in its entirety.

Having considered the appeal, the supporting grounds and the rival submissions, the duty of this court was to re-consider the evidence availed before the trial court and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

5. In that regard, the evidence led against the Appellant by the Complainant John Kipkoech Maritim[PW1], a school bursar Benjamin Cheruiyot Korir [PW2] and the Investigations Officer, PC Dalmas Mukwanya [PW3] was considered against the Appellant's evidence in defence and in the opinion of this court there was no dispute that the Appellant was indeed employed by the Complainant, as a debt collector in his company known as Jolly Super Enterprises Limited and in the course of her employment she was responsible for collection of debts from various schools.

6. It was also not disputed that the Appellant collected a sum of approximately Kshs. 441,000/- owed to her employer [PW1] by Kericho Tea Boys High School.

The money was actually paid to her in two instalments by the school bursar [PW2] on the 28<sup>th</sup> and 29<sup>th</sup> January 2020.

7. It was again undisputed that the money was never handed over to the Complainant and instead the Appellant alleged that her house was broken into and the money stolen from therein by unknown people while she was away in hospital attending to her sick child. She further alleged that the door of the house was opened thereby implying that the house was constructively broken into.

The Appellant indicated that she reported the incident to Roret Police Station.

8. The Investigations Officer [PW3] pursued both reports made by the Complainant against the Appellant and by the Appellant regarding the alleged house breaking and theft of the money from inside her house.

9. It was from all the foregoing evidential facts that the trial court concluded that the prosecution's case against the Appellant had been proved beyond reasonable doubt.

This court is satisfied that the trial court arrived at a conclusion which was based on credible and cogent mostly, undisputed evidence which established and proved the material ingredients of the charge against the Appellant.

10. It was evident that the Appellant lawfully received the money for and on behalf of the Complainant from his debtors. However, the manner in which she dealt with it after the receipt showed that she had an intention to permanently deprive the Complainant of the money and this was clearly manifested by making a false report that her house was broken into and the money stolen from therein by the unknown offenders.

11. The fact that the money was not recovered clearly proved that the complainant was fraudulently and permanently deprived of the money at the instance of the Appellant, his employee. It was therefore not a coincidence that the money was not surrendered to the Complainant within the shortest period of time as it should have, nor was it a coincidence that the Complainant suddenly found herself in hospital nursing her sick child, neither was it a coincidence that her house was broken into and the money stolen from therein while she was away in hospital.

12. The police investigations on the alleged housebreaking and theft of money discredited and indeed disproved the Appellant's report thereby rendering it an afterthought intended to divert attention



from the Appellants fraudulent acts which led to loss of the Complainants money by a softly executed and clever act of theft.

13. For all the reasons foregoing the Appellants grounds of appeal and the supporting submissions are incapable of being sustained by this court. In the end result, the appeal is hereby dismissed in its entirety for want of merit.

Ordered accordingly

**DELIVERED AND DATED THIS 12<sup>TH</sup> DAY OF JUNE 2025**

**HON. J. R. KARANJAH,**

**JUDGE**

