



REPUBLIC OF KENYA



KENYA LAW
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**Chelang'a v Republic (Criminal Appeal 51 of 2020)
[2023] KEHC 2060 (KLR) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL 51 OF 2020
JWW MONG'ARE, J
MARCH 9, 2023**

BETWEEN

ABRAHAM CHELANG'A APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence of Hon. R Odenyo in Eldoret CMCCR Case No. 494 of 2018 delivered on 28th October, 2020)

JUDGMENT

1. The Appellant was charged with the offence of stealing by agent contrary to section 283(b) of the [Penal Code](#). The particulars of the offence are that on diverse dates between March 10, 2016 to January 1, 2017 in Eldoret, within Uasin Gishu County, being an agent of William Kosgei stole cash Kshs 550, 000/- being proceeds of the sale of motor vehicle registration number KBS 833E make Toyota Mark II the property of the said William Kosgei which he entrusted to him to sell.
2. The Appellant pleaded not guilty and the matter proceeded to full hearing. Upon considering the evidence tendered in court, the testimonies of the witnesses and the submissions of the parties, the trial magistrate found the Appellant guilty and sentenced him to pay a fine of Kshs 100,000, in default one-year imprisonment.
3. Being aggrieved by the sentence and conviction the Appellant instituted the present appeal vide a petition of appeal dated November 3, 2020 premised on the following grounds;
 1. That the Learned Trial Magistrate erred in law and fact in holding that the prosecution had proved its case beyond reasonable doubt when in fact it had not.



2. That the Learned Trial Magistrate erred in law and fact in failing to independently analyze and/or evaluate the evidence on record hence an erroneous determination.
3. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant without taking into account the weight of the defence evidence adduced.
4. That the Learned Trial Magistrate erred in failing to appreciate and find that all the charges preferred against the Appellant had not been established and proved as required by law.
5. That the Learned Trial Magistrate erred in shifting the burden of proof onto the Appellant.
6. That the Learned Trial Magistrate erred in disregarding the admission by the Investigation Officer that he received money from the complainant.
7. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant when there was no proof that the Appellant had was an agent of the Respondent.
8. That the Learned Trial Magistrate erred in law and fact in taking into account the fact that the Complainant acknowledged receiving money from the Appellant.
9. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant without sufficient evidence and in rejecting the Appellant's defence.
10. That the Learned Trial Magistrate erred in law and fact in failing to hold that the prosecution had not and/or did not link the Appellant to the alleged crime charges against him for wants of proof beyond reasonable doubt.

The parties filed submissions on the appeal.

Appellant's Case

4. Learned counsel for the Appellant submitted that there was no link between the money received by the Appellant via his mobile phone and the instalments towards the purchase of the motor vehicle in issue. Further, that there was nothing to prove that the money received by the Appellant was from the complainant.
5. It was his explanation that he had a coach/athlete relationship with the complainant who was based in the US and that the money transactions were payments of races he had participated in while there. He maintained that the trial court failed to prove its case to the required standard. He urged the court to allow his appeal and acquit him.

Respondent's Case

6. The Respondent opposed the appeal and submitted that the trial court analysed the evidence of all the witnesses and rightly agreed with them. Counsel urged that the Appellant received money and was well known to her, evidence that was corroborated by the witnesses.



7. Further, that the exhibits produced by the investigating officer were solid and placed the Appellant at the centre of the transaction. The Respondent urged the court to dismiss the appeal and uphold the conviction and sentence.

Analysis & Determination

8. The duty of an appellate court was stated in *Okeno v. Republic* [1972] EA 32 where the court held:

“The first appellate court must itself weigh conflicting evidence and draw its own conclusions (Shantilal M. Ruwala -V- R. (1975) EA 57). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

9. Upon consideration of the petition of appeal and the submissions of the parties, the following issue arise for determination;

“Whether the prosecution proved its case to the required standard”.

Whether the prosecution proved its case to the required standard

10. Section 283(b) of the Penal Code stipulates as follows;

“If the thing stolen is any of the things following, that is to say:-

“property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof.....

the offender is liable to imprisonment for seven years.”

11. I have considered the evidence tendered in the trial court including the testimonies of the witnesses and there is a sequence of events that points to the Appellant having stolen from the complainant by servant emerges. I agree with the finding of the trial court that the Appellant was an agent of the complainant for purposes of purchasing the motor vehicle registration No KBS 833E. PW3 confirmed that he sold the vehicle to the complainant and that the Appellant paid the balance of the consideration.
12. The evidence that the Appellant received the funds to purchase the vehicle was tendered by PW2, Quinto Odeke, an employee of Safaricom whose work is data extraction. He brought to the attention of the court a series of transactions originating from Chase bank API to the Appellant’s Mpesa account from 10th March, 2016 to 12th October, 2016. From the evidence on record, it is clear that the Appellant sold motor vehicle registration No KBS 833E which belonged to the complainant and he even gave him the balance of Kshs 100,000 together with another vehicle after he had sold the motor vehicle.
13. It is clear that the Appellant did not remit the proceeds of the sale in full. The vehicle he gave him after selling the KBS 833E was returned to the Appellant and never transferred to the complainant thus leaving a balance of Kshs 550,000/- from the sale of KBS 833E due to the complainant. The claim that the complainant received money from the Appellant is unfounded as it was proved to be payments arising from their coach-athlete relationship and not the motor vehicle transactions.



14. It was proved beyond reasonable doubt that the Appellant acted as the agent of the complainant and sold the vehicle he had purchased on his behalf. He never remitted the proceeds of the sale and as such I agree with the findings of the trial court that he stole the sum of Kshs 550,000/- from the complainant. In the premises, I uphold the conviction.
15. Section 283 of the Penal Code prescribes a sentence of seven years that is neither a mandatory minimum nor maximum. It is my considered view that the sentence meted out by the trial court was commensurate with the offence.
16. In the premises therefore, I hereby make the following orders;
 1. The appeal is dismissed for lack of merit and the decision in Eldoret CMCCR Case No 494 of 2018 is upheld.
 2. The Appellant is ordered to comply with orders issued by the trial court in Eldoret CMCCR Case No 494 of 2018 delivered on October 28, 2020.

DELIVERED, DATED AND SIGNED ON THIS 9TH DAY OF MARCH 2023

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J.W.W.MONGARE

JUDGE

Delivered virtually in the presence of

- 1) Ms. Mukhabani for the Appellant
- 2) Mr. Rop holding brief for Ms. Okok for the respondent
- 3) Brian Kimathi- Court Assistant

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J.W.W.MONGARE

JUDGE

