



**Thiaane & another v Republic (Criminal Appeal E11 of 2020)  
[2023] KEHC 1944 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1944 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL APPEAL E11 OF 2020  
JM CHIGITI, J  
MARCH 13, 2023**

**BETWEEN**

**PAUL KARUI THIAANE ..... 1<sup>ST</sup> APPELLANT**

**EMILY NKATA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being and Appeal against the sentence and conviction order of  
Hon. Mr. Eriany (SRM), on the 15th day of December 2020 in the  
Thika Chief Magistrates Courts Criminal Case no. 2010 of 2019)*

**JUDGMENT**

**Brief background:**

1. The appellants were charged with the offence of stealing by agent contrary to section 283(b) of the [Penal Code](#) at Chief Magistrates Court at Thika Criminal Case Number 2010 of 2019.
2. The appellants On the 28<sup>th</sup> day of January, 2019 at Makongeni phase 4 in Thika West sub county, jointly being agents of Green Gold Farmers, they stole Kshs 85,000/- the property of the said Green Gold Framers which had been entrusted to them to deliver to Purity Nkatha.
3. They were also charged with count 2 that on the 28<sup>th</sup> day of January, 2019 at Makongeni phase 4 in Thika West sub county, jointly being agents of Green Gold Farmers, they stole Kshs 103,500/- the property of the said Green Gold Framers which had been entrusted to them to deliver to Mercy Kagi Marangu.
4. The matter proceeded into full hearing wherein the prosecution called four (4) witnesses and relied on a number of exhibits to prove its case beyond reasonable doubt. When the case came up defence for hearing the appellants opted to give unsworn evidence.



5. The matter culminated on judgment dated December 15, 2020 and the appellants were convicted under section 215 of the *Criminal Procedure Code*.
6. Being dissatisfied with the decision of the trial court on the conviction and sentence the appellants lodged a petition of appeal on December 23, 2020 wherein the appellants raised seven (7) grounds of appeal as follows urging this court to allow the appeal setting aside the conviction and sentence:
  - a. That learned magistrate erred in law and fact in disregarding the evidence of the accused persons.
  - b. That the learned magistrate erred in law and fact in sentencing and the fine excessive.
  - c. That the trial magistrate erred in law and fact in convicting the accused while the elements of the offence have not been proven.
  - d. That the learned magistrate erred in law and facts in assigning the accused officials capacity with no evidence.
  - e. That the trial magistrate erred in law and facts in convicting the accused without evidence to support the charge.
  - f. That the trial magistrate erred in law and facts in convicting the appellants when the case against the appellants was not proved beyond reasonable doubt.
  - g. That the trial magistrate erred in law and facts in shifting the burden of proof to the appellant.
7. Parties agreed to proceed by way of written submissions on 27/1/23 when the matter came up for directions. Only the respondent complied.

### **Analysis and Determination**

8. This court is sitting as a first appellate court and I am guided by the principles as enunciated in the case of *Okeno vs Republic* [1972] EA 32 as follows;

“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. When sitting on appeal this court has a duty to rehear, re-evaluate the entire case, and evidence and come to its own conclusions. I have gone through the evidence, the petition of appeal, the proceedings and the judgment and identified the following issues:
  - A. Did the prosecution prove its case beyond unreasonable doubt or not?
  - B. Did the trial court err in law and in fact in finding the appellants guilty of stealing by agent?
10. I have looked at the proceedings and established that the appellants were the treasurer and secretary of their merry go round outfit, known as green gold, wherein the members would contribute Kshs 500/= each every day, and the money would be given to the members in a rotation form at the end of the month.



11. All the evidence, given by the all the prosecution witnesses was consistent and it pointed the fact that there was a relationship between them and the appellants. They all testified to the effect that they used to give money to the appellants for purposes of pooling funds that would then be distributed to the members. This evidence was not controverted by the appellant's during cross-examination.
12. The appellants do not deny that they do not know the complainants or the witnesses. They do not deny having received the funds. The evidence shows that they used to attend the meetings of the merry-go-round albeit without the funds. I thus find the evidence of the prosecution witness credible and unshaken.

**Disposition:**

13. I am satisfied that the appellants were members of the Green Gold and they acted in the capacity of agents of the complainant. I am also satisfied that they received funds from the complainant. From the complainants evidence I am satisfied that the appellants converted the funds to their own use to the detriment of the complainants.
14. I am satisfied the appellants acted or had the mens rea, and the actus rea as established by their conversion of the funds for their own use.
15. I have analyzed the nature of the defence and what the appellants mounted during the defence hearing. They embraced an unusually relaxed and casual disposition. They seemed to blame a family difference to be the cause of what they did. They simply asked the court to dismiss the case.
16. I have also analyzed the documents tendered by the prosecution as exhibits and I am satisfied that indeed, the transactions complained of took place. I am satisfied that the complainants deposited money with the appellant.
17. It is my finding that the prosecution discharged its burden of proof beyond reasonable doubt. I am satisfied that the prosecution proved its case to the expected standard beyond reasonable doubt.
18. The appellants complain that the burden of proof was placed on their shoulders. Far from that, the prosecution has established a case.
19. After an evaluation, reanalyzing reassessment of the case, I do not see any reason or justification to reverse the finding of the trial court. The conviction and the sentence are legal. The upshot is that the appeal lacks merit.

**Orders:**

- 20 The appeal lacks merit and the same is dismissed.

**DATED AND DELIVERED AT KIAMBU THIS 13<sup>TH</sup> DAY OF MARCH, 2023.**

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**J. CHIGITI (SC)**

**JUDGE**

