



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL APPEAL NO. E001 OF 2020**

**YUSUF AGRIPPA IBRAHIM alias**

**ABRAHAM KIPROTICH LANGAT.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an appeal from the original conviction and sentence of three years imprisonment by Hon. S. M. Mokuia***

***(CM) in CMCC No.623 of 2017 delivered on 9/9/2020)***

**J U D G M E N T**

1. The Accused person was convicted and sentenced to three (3) years imprisonment for the offence of stealing Contrary to Section 268 (i) as read with Section 275 of the Penal Code
2. The particulars of the charge were that on diverse dates between January, 2014 and 29/9/2014, the Appellant stole 56,000 Cooperative Bank Shares valued at Kshs.1,045,775.65 the property of **GRACE CHEPKIRUI TOGOS**.
3. A summary of the prosecution evidence was that in 1995, the Complainant who is a Teacher based at Bomet took a loan which she invested in Cooperative Bank in two categories – 20,000 and 36,000 respectively.
4. In 2014, the Appellant visited her home and he informed her that he was assisting teachers in Bomet to open CDS Accounts. He showed the Complainant the names of the Teachers and her name was among them.
5. The Complainant declined to give the Appellant a go ahead to open the Account. In 2015, the Complainant did not earn her dividends and she decided to go and find out what had happened
6. The Complainant learnt that her shares were sold to Sterling Capital Limited by someone introduced as **GRACE TOGOS** by one **PETER LANGAT** and the proceeds of the sale were paid in two categories – Kshs.106,365 and Kshs.939,409.85.
7. There was evidence that the Appellant and another person not before Court approached Sterling Capital Limited for the sale of the Shares. The document examiner examined the Appellant's handwriting and also the questioned documents and formed the opinion that they were made in the same hand. The Trial Court found that the Appellant stole the Complainant's shares and he was convicted and sentenced to 3 years imprisonment.
8. The Appellant has now filed this appeal against the conviction and sentence on the following grounds:-
  - (i) ***THAT the charge of forgery was not proved and further that vital documents were not produced including proof that the money was stolen.***
  - (ii) ***THAT the charge of forgery was defective for failing to include the particulars of forgery.***
  - (iii) ***THAT the documentary evidence was inadequate and inconclusive.***
  - (iv) ***THAT the prosecution did not prove "mens rea" and further that hearsay evidence was erroneously admitted.***
  - (v) ***THAT the burden of proof was shifted to the Appellant and further that extraneous circumstances were taken into account in***

*sentencing the Appellant.*

9. The parties filed written submissions in the appeal. The Appellant submitted in writing that the Trial Court shifted the burden of proof to the Appellant and further that there existed doubt on the admissibility of the document examiner's report.
10. The Appellant also submitted that the prosecution did not prove its case beyond reasonable doubts and further that the prosecution relied on inconclusive and inadequate evidence in that the document examiner did not elaborate on the features that form the similarities and dissimilarities as set out in the case of (*HASSAN SALUM -VS- REPUBLIC 1964 EA Pg. 128.*)
11. The Respondent opposed the appeal and submitted that PW.1 identified the Appellant as the person who approached her posing as a Cooperative Bank Agent with a view of opening a CDS Account and further he was also identified by PW.3 an employee of Sterling Capital as the person who introduced himself as Peter Langat and was in the Company of a woman who introduced herself as the Complainant in this case.
12. The Respondent also submitted that the document examiner's evidence being an expert witness gave clear and concise evidence showing the specimen handwriting and signature from the Appellant matched with the disputed documents.
13. The Respondent further submitted that the Judgment was consistent with the weight of evidence adduced by the prosecution.
14. This being the first Appellate Court, it is the duty of this Court to re-evaluate the evidence adduced before the Trial Court and to arrive at my own conclusion whether to support the findings of the Trial Court bearing in mind that the Trial Court had the opportunity to see the witnesses.
15. The issues for determination in this appeal are as follows:-
  - (i) Whether the Appellant was properly identified.
  - (ii) Whether the conviction herein is safe.
16. On the issue of identification of the Appellant, the Complainant and her son identified the Appellant as the person who went to their home and told them he was assisting teachers to open a CDS Accounts.
17. The witness from Sterling also identified the Appellant as the person who sold the Complainant's shares in the company of a woman who identified herself as the Complainant in this case.
18. The evidence of the document examiner corroborated the testimony of the witness from Sterling.
19. I find that the Appellant was properly identified as the person who accompanied a woman who identified herself as the Complainant and sold the shares.
20. I find that the conviction herein is safe and the sentence lawful and I uphold them.
21. The Appeal is accordingly dismissed.
22. The Appellant has a right of appeal.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF JULY, 2021.**

**A. N. ONGERI**

**JUDGE**