



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO.90 OF 2018

CAROLYNE NJERI MACHARIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from original Conviction and Sentence in Nanyuki CM

Criminal Case No 576 of 2015 – W J Gichimu, PM)

J U D G M E N T

1. The Appellant herein, **CAROLYNE NJERI MACHARIA**, was on 18/09/2018 convicted after trial of four offences as follows –

- Count I: ***Stealing a motor vehicle*** contrary to **section 278A** of the ***Penal Code***.

Count II: ***Impersonation*** contrary to **section 382(1)** of the Penal Code.

Counts III & IV: ***Forgery*** contrary to **section 349** of the Penal Code.

She was sentenced respectively sentenced to 4 years, 1 year, 2 years and 2 years imprisonment, all sentences to run concurrently. She appealed against both conviction and sentence. On 11/04/2019 the court, in a considered ruling, admitted the Appellant to bail pending hearing of her appeal.

2. At the hearing of the appeal, the Appellant’s learned counsel argued two main grounds. The first was on ***identification*** while the second was on ***admission of electronic evidence***. Learned counsel for the Respondent conceded the appeal upon the two grounds.

3. I have read through the record of the trial court in order to evaluate the evidence on my own and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however, that I neither saw nor heard the witnesses testify, and I have given due allowance for that fact.

4. PW2 and PW3 purported to identify the Appellant in an identification parade conducted nearly a year after commission of the offence in Count I. Besides, the Appellant testified under oath and was not challenged in cross-examination, that after she was arrested in Nairobi on 08/05/2015 the motor vehicle used to transport her to ***Nanyuki Police Station*** belonged to the complainant, and that its driver was not a police officer. The Appellant therefore feared that a description of her may have been given to PW2 and PW3, and that the parade was not conducted with scrupulous fairness.

5. More importantly, part of the prosecution evidence was digital in nature and comprised print-outs from ***Safaricom Limited***, the ***Registrar of Persons*** and the ***National Transport and Safety Authority*** (NTSA). The trial court relied heavily upon the digital evidence to convict the Appellant. However, the digital evidence was admitted in evidence without the necessary certificates as required by **section 106B (4)** of the ***Evidence Act, Cap 80***. Such certificates are a mandatory condition precedent for production and admission of electronic or digital documents in evidence.

6. Upon my own evaluation of the evidence placed before the trial court, if the electronic evidence wrongly admitted in evidence is discounted, it cannot be said that the Appellant’s convictions are sound and safe. They therefore cannot be allowed to stand.

7. In the circumstances I will allow this appeal in its entirety. All the Appellant’s convictions are hereby quashed and the sentences meted

out to her set aside. It is so ordered. She is hereby released from the terms of her bail.

DATED AND SIGNED AT NANYUKI THIS 14TH DAY OF SEPTEMBER 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 14TH DAY OF OCTOBER 2021