

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 48 OF 2017

DORCAS AKOLA AKHONYA.....APPELLANT

-versus-

REPUBLIC.....RESPONDENT

(Being an appeal arising from the conviction and sentence by Hon. C. O. Obulutsa, Chief Magistrate in Eldoret Chief Magistrate's Court Criminal Case No. 5082 of 2015 delivered on 30/09/2016)

JUDGMENT

1. The Appellant herein, **Dorcac Akola Akhonya**, was employed by Life Care Pharmaceutical Limited as a Cashier. She was charged with the offence of **Stealing by servant** contrary to **Section 281** of the **Penal Code, Cap. 63** of the Laws of Kenya. She was subsequently tried, found guilty, convicted and sentenced to five years imprisonment.

2. The prosecution availed four witnesses in support of its case. The witnesses were the Company's Director one **Dr. Muriithi Isaac Mburu (PW1)**, **Kelly Mutai Rop (PW2)**, a Certified Public Accountant who audited the company's accounts and prepared a report on the loss of Kshs. 2,492,064/=, **No. 224530 PC Simon Bitok (PW3)** of Criminal Investigation Unit of National Police Service attached at Safaricom Headquarters as a Liaison officer who availed MPesa statements on the questioned transactions. **No. 51657 Corp. John Imbaya** of the CID Eldoret (**PW4**) was the investigating officer. The Appellant was placed on her defence and tendered a sworn defence.

3. Being dissatisfied with the conviction and sentence, the Appellant lodged an appeal with the leave of the Court. The appeal was heard by way of written submissions on the part of the Appellant and the State made oral submissions. The Appellant mainly contended that the charge was not proved since she was not the only one who handled the company phone and the money. The appeal was opposed. Counsel for the State, **Miss Mokua** urged this Court to dismiss the appeal.

4. The role of this Court as the first appellate Court is well settled. It was held in the case of **Okemo vs. R (1977) EALR 32** and further in the Court of Appeal case of **Mark Oiruri Mose vs. R (2013) eKLR** that this Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyze it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and give allowance for that.

5. In line with the foregoing, this Court in determining this appeal is to satisfy itself that the ingredients of the offence of Stealing by servant was proved and as so required in law; beyond any reasonable doubt. Needless to say, I have carefully read and understood the proceedings and the judgment of the trial court as well as the record before this Court and also the submissions.

6. The totality of the prosecution's evidence is that it was the Appellant who committed the offence. The evidence of PW1 was congenitly corroborated by that of PW2, PW3 and PW4. There was evidence showing that all the disputed entries were transacted by the Appellant and the contention that the Appellant was not the only one who handled the phone and money and that she was framed did not lie. The Appellant was rightly found guilty and convicted. The appeal on the conviction is hereby dismissed.

7. As to the sentence, I have considered the mitigations tendered as well as the various medical documents filed on 05/09/2018 on the Appellant's current health status. Whereas the sentence handed down is lawful, I am persuaded that the Appellant has by now learnt her lesson and ought to be accorded an opportunity to put together her life once again. As an ailing mother of two children who has been in prison for two years, I hereby review the sentence to the period already served. The Appellant is hereby set at liberty unless otherwise lawfully held. It is so ordered.

SIGNED BY:

A. C. MRIMA

JUDGE

DATED, COUNTERSIGNED and DELIVERED at ELDORET this 1st day of November, 2018.

H. A. OMONDI

JUDGE