



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 277 OF 2013

VINCENT GITAMO OKIOGA..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 677 of 2009 of the Chief Magistrate's Court at Mombasa – **Hon. Odenyo - SPM**)

JUDGMENT

The Appellant was Sentenced to two years imprisonment on Count III for the offence of stealing by servant contrary to section 281 of the Penal Code.

The particulars are that on the 3rd day of February, 2009 at CFC Bank along Digo road in Mombasa County being the accountant to Savings Tea Brokers Ltd, jointly with others not before the Court stole Ksh. 482, 740/= the property of the said Savings Tea Brokers Ltd. which came into his possession by virtue of his employment being an accountant.

In the first Count in which he was acquitted he had been charged with stealing by servant contrary to section 281 of the Penal Code. In that he had stolen cheque leafs Nos. 004449, No. 00482 and No. 004425, the property of Savings Tea Brokers Ltd.

The Second Count is also in respect to the offence of stealing by servant contrary to section 281 of the Penal Code in that being an accountant for the Complainant he stole Ksh. 476, 260/= the property of the Complainant which came into his possession by virtue of his employment and in the fourth Count he was charged with attempted stealing contrary to section 275 as read with section 389 of the Penal Code.

In respect to the third Count this is what the trial magistrate observed,

“ on the issue of stealing of Ksh. 482,740, I have reached the conclusion that the charge has been proved directly against the Accused. PW 6 who was an assistant to the Accused person said she received a call from CFC Bank asking her to confirm if cheque No. 4449 was valid. That she told the caller that she does not deal with cheques. That eventually accused came and she told him about the call and just as that time a second call from the Bank came and Accused received it. This evidence well corroborated by the evidence of PW 7 who said that he called and spoke to Ruth (PW 6) who transferred the call to the Accused who okayed the payment of Ksh. 482, 740/= to the payee named in that cheque”

As earlier pointed out the Appellant was absolved of the theft of the cheque leaves. It is in evidence that apart from the appellant there were other people who had access to the cheque books.

The document examiner testified to the effect that the Accused was not the author of the cheques. The specimen signatures of the directors were not taken.

This appeal is conceded by the state.

I do find that the Conviction was not safe.

The Conviction is quashed and Sentence set aside.

The Appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **4th** day of **October, 2013**.

.....

M. MUYA

JUDGE

4TH OCTOBER, 2013

In the presence of:-

Learned state Counsel Ms. Ogweno

Learned Counsel absent

Court clerk Musundi