



1. Criminal Law
2. Criminal Appeal
 - 1: **Subject of main criminal case**
 - i) Stealing by servant contrary to section 281 of the penal code.
 - ii) Making a false document contrary to section 357 (a)
 - iii) forgery contrary to section 349
 - iv) Altering false documents contrary to Section 353 of the penal code.
 - 11.2. Plea not guilty entered.
 - 11.3. Appellant formerly worked with the complainant for less than one year.
 - 11.4. Work found. Unsatisfactory and was sacked in 1998.
 - 11.5. Failed to return cheques
 - 11.6. Approached bank and withdrew funds from bank before each teller PW6, 7, 8 and 9.
 - 11.7. Total withdrawn 135,035/=.
 - II: Defence – That payment for his case that he sold to cooperative.
 - III: All documents cheques found to be forgery.
 - IV: Appellant found guilty and convicted.
 - a) Count I – three years imprisonment for stealing by servant.
 - b) Count 2,4,8,11,14,18,20,36,29,22 and 35 – three years imprisonment for making of a document.
 - c) Count 4,7,10,13,16,19,22,25,28,31,34,37. Altering a document contrary to Section 353.
 - d) Appellant acquitted on count 2,5,8,9,16,17,22,23,26,29,32 and 35 for making document without authority and acquitted.
Date 29th January, 2000.
 3. **Appellant files appeal on 12th February, 2001**
 - i) Appeal filed out of time
 - ii) Admitted to hearing 28th February, 2001 Rimita J without leave of court.
 - iii) If per chance appealed filed on time.
 4. **Appeal against conviction and sentence.**
 - i) Wrong standard of proof applied.
 - ii) Defence of alibi ignored
 - iii) Document examination not according to Law
 - iv) Proof of case not made.
 5. **State counsel**
 - i) Upholds the conviction and sentence.
 - ii) Documents made without authority not sufficient proof.
 6. **Held.**
 - i) Appeal dismissed having been filed out of time without leave of court.
 - ii) If per chance it was filed in time appeal against conviction and sentence dismissed as having no merits.
 7. **Obiter Dictum**
 - i) An accused person should generally not face multiplicity of charges as this may be an embarrassment.
 - ii) Charges be brought to required amounts as to law to allow appellant offender answer to same.
 - iii) No injustice occasioned herein.
 8. **Advocates**

P. Kiprop state counsel instructed by the Attorney General for the Respondent – present

Accused in person - absent(sentence served)

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL APPEAL 4 OF 2001
DAVID KIPNGENO BETT APPELLANT
VERSUS
REPUBLIC RESPONDENT

(From the decision of the Principal Magistrate Kericho Law Courts Criminal Case No. 1596/99 of 29th January, 2001 S.G. O'nganyi (Esquire) Principal Magistrate)

JUDGMENT

I: Background

1. David Kipngeno Bett was an employer of Kongeren Multi-purpose Co-operative society. It was then namely formed sometime in 1997 for purposes of harvesting and transporting cane for its members.
2. Being dissatisfied with the work of the appellant the said Co-operative society sacked him in 1998 unfortunately being a new entity they failed to have him return cheque leaves Nos. 386 to 400. Unknown to them, the appellant was able to withdraw a total sum of Kshs. 135,031/= (trial magistrate found the exact figure to be Kshs. 134,946/=) between the 30th July, 1998 to 13th June, 1999.
3. The appellant on having discovered was arrested and charged with
 - i) **Stealing by servant contrary to section 281,**
 - ii) **Making a false document contrary to section 357 A of the Penal Code.**
 - iii) **Forgery contrary to Section 349 of the Penal Code.**
 - iv) **Uttering a false document contrary to Section 353 of the Penal Code.**
 - v) **And making a false document without authority contrary to section 357(a) of the Penal Code.**
4. The trial magistrate had faced before him 37 counts to put before the said appellant. This court would note in its obiter dictum, that where an accused is faced with several charges he is not to be overburden with all of them at once as it would amount to an embarrassment on his part. I nonetheless note that the various counts are inter related and no prejudice in this had occurred.
5. After the appellant was relieved of his duties he used the various cheque leaves to pay himself. There were bank tellers being PW6, 7, 8 and 9 who were able to identify the appellant personally as the person they paid cash to over the counter on the cheques presented to them by him.
6. The prosecution alleged the cheques were false and forged.
7. In his defence the appellant alleged that the payments were due to his payments for the cane he had delivered. It seems that the said cane proceeds were to be paid to him. He also had an alibi.
8. The trial magistrate found the appellant guilty as charged on the count of
 - i) **Stealing by servant – sentenced to three years imprisonment.**
 - ii) **Making of a false document sentenced to three years imprisonment on count 2, 4, 8, 11, 14, 18, 20, 36, 39, 22 and 35.**
 - iii) **Uttering a false document (Section 353 of penal code) contrary to and on count 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37.**
9. The appellant was acquitted on count 2, 5, 8, 9, 16, 17, 22, 23, 26, 29, 32 and 35 for making of documents without authority.
10. The sentence was passed on 29th January, 2000. Being dissatisfied with the conviction and sentence the appellant filed an appeal to this court on 12th February, 2001.
11. The appeal was filed out of time. It was admitted to hearing on 28th February, 2001.

II: Findings.

12. As the appeal was filed out of time I would dismiss the same.
13. If per chance the appeal had been filed on time. I would have made the following findings:-
14. The appellants grounds of appeal was that
 - i) **The trial magistrate used the wrong standard of proof applied.**

- ii) **He had a defence of alibi that was ignored.**
 - iii) **The document examiner did not examine according to law.**
 - iv) **Proof of the case was not made out.**
15. The state counsel in reply upheld the conviction and sentence but agreed with the trial magistrate on the issue of the documents made without authority.
16. I find that the bank tellers regularly for almost an year received the appellant and served him over the counter.
17. I find there was sufficient evidence to uphold the conviction and sentence.
18. This appeal is dismissed on grounds that it had been filed out of time. Further the appeal has no merits. The appellant has completed his sentence. I am made to understand.

DATED this 6th day of October 2009 at **KERICHO**

M.A. ANG'AWA
JUDGE

Advocates

- P. Kiprop state counsel instructed by the Attorney General for the Respondent – present
Accused in person - absent(sentence served)