

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 105 OF 1992

JACKTON JUMA ADHOLA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 5853 of 1989 of the Resident Magistrate's Court at Nairobi: C Muibau)

JUDGMENT

The appellant, Jackton Juma Adhola was convicted after trial by the learned Resident Magistrate, Nairobi, on two counts of the offence of giving false information to a person employed in the public service contrary to section 129 (a) of the Penal Code. Upon his conviction, he was sentenced in respect of each count to serve 6 months imprisonment. It was never indicated whether the sentence in respect of these counts were to run concurrently or consecutively. His appeal to this Court is against conviction and sentence.

Briefly, the prosecution case was that on the 16th of October, 1989, Silvan Joseph Odera (PW1) who was then the Deputy Director of Personnel Administration in the Directorate of Personnel Management (DPM), received a phone call from someone who introduced himself as Noah Arap Too who was the Director of Criminal Investigations. The caller requested that one Jackton Juma Adhola, P/No 201995, who was allegedly attached to the CID on special assignment but was employed by the Ministry of Planning and National Development be transferred on special assignment to the Office of the President, Nyayo Commuter Bus Services. He was asked to arrange for the transfer. Following the said telephone conversation, Mr Odera (PW1) testified that he telephoned Mr Gwara who was the Principal Personnel Officer in charge of the Ministry of Planning and National Development to confirm whether Mr Adhola whose transfer was allegedly sought by Director of the CID was in their payroll and this was confirmed. He then directed him to transfer Adhola (appellant) as requested and further communicated such directive to Mr Sabari (PW2) who was the Deputy Director of Personnel in the Office of the President.

The transfer of Mr Adhola to the Nyayo Bus Service was thus effected by letter dated 19th of October, 1989 addressed to the appellant. He duly reported to the Nyayo Youth Service on the 25th of October, 1989 and was on the same day deployed at the Nyayo Bus Service, Mombasa.

On the 26th of October, 1989, Mr Sabari (PW2) received a telephone call from someone who introduced himself as the Director of the CID requesting that the transfer of Mr Adhola (appellant) to the National Youth Service, (Nyayo Bus Services) which had been effected be cancelled. He then telephoned the Asst Director of the National Youth Service, Mr Nyangau and communicated to him the alleged wish of the CID boss to have the transfer of Mr Adhola (appellant) cancelled. Thereafter he received further telephone calls from the alleged CID boss which made him suspicious about the whole matter regarding the transfer of Mr Adhola (appellant). He got across to Mr Noah Arap Too (PW12) who is the Director of CID and he denied having ever telephoned him or any one else in connection with Mr Adhola whom he did not even know. This was confirmed by Mr Too (PW12) in his evidence. As a result, the matter was investigated and the appellant was arrested and charged.

In his defence, the appellant denied having made the alleged telephone calls to PW1 requesting for his

transfer to Nyayo Bus Services or to PW2 to cancel such transfer. According to him, he thought that he had been given a normal transfer to the Nyayo Bus Service as a public officer and he only went to Mr Sabari (PW2) to complain when he found that he was being transferred to Mombasa and yet he had a family in Nairobi. He denied the allegations made against him that he had impersonated the Director of CID.

It is clear from the evidence on record that the transfer of the appellant from the Ministry of Planning & National Development to the Nyayo Bus Service was initiated through a telephone conversation by someone who had allegedly introduced himself as Mr Noah Arap Too, the Director of the CID. As it later turned out, all these telephone calls were found to have not originated from the CID boss and were not genuine. The learned trial magistrate found that someone else other than Noah Arap Too (PW12) must have telephoned to organize the transfer of the appellant and she believed that this must have been the appellant himself or his accomplice. The appellant has firmly denied having initiated his transfer in this manner and says that he thought that it was just a normal transfer for him.

Upon my consideration and evaluation of the recorded evidence, I find that there was no sound basis for any conclusion that the appellant was the one who had impersonated the Director of CID on phone and requested for his transfer to the Nyayo Bus Service and thereafter to cancel such transfer. No one saw him making such telephone calls and the voice of the caller was never identified. He could as well have been a victim of anyone who may have wished to put him in trouble with the law although this was not suggested. The point, however, is that there was clearly insufficient evidence to prove that he had himself given the information upon which those senior officers in the Government had acted. This case, to my mind, illustrates some weakness in the Civil Service Administration where personnel can easily be transferred on a mere telephone message and I do not wish to believe that one can be sacked so easily.

All in all, I am satisfied that the conviction of the appellant was not safe. I allow his appeal and quash his conviction in counts 1 and 2. I set aside the sentences that were imposed. I order that he shall be set free and be released forthwith unless otherwise lawfully held.

Dated and Delivered at Nairobi this 3rd day of May 1994.

S.O.OGUK

JUDGE