



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, TUNOI, J.J.A. & BOSIRE, AG. J.A
CRIMINAL APPEAL NO. 7 OF 1997
BETWEEN
CHARLES WANJAU KARIMI.....APPELLANT
AND
REPUBLIC.....RESPONDENT
(Appeal from a judgment of the High Court of Kenya at Nyeri
(Osiero, J.) dated 24th September, 1996
in
H.C.CR.A. NO. 221 OF 1995)

JUDGMENT OF THE COURT:

In this second appeal, the appellant has put forward four grounds of appeal the thrust of which is the failure by the first appellate judge to hold that the charges preferred against him (appellant) in the court of the first instance were not proved beyond reasonable doubt as is by law required and in particular for the reason that the documents used to back up those charges were not proved to have been prepared by the appellant with the result that the offences for which the appellant was charged were not disclosed.

The appellant had been charged before the Principal Magistrate's Court at Nyeri with eight counts the first seven of which related to the offence of stealing by a person employed in the public service contrary to Section 280 of the Penal Code , Chapter 63 of the Laws of Kenya, hereinafter called the Penal Code, while the eighth related to the offence of fraudulent false accounting contrary to Section 330 (a) of the Penal Code .

The first seven counts related respectively to the theft by the appellant at Giakanja Post Office in Nyeri District of K.Shs. 5,090/= between 1st and 15th July, 1992; K.Shs.13,180/= between 7th and 14th July, 1992; K.Shs.25,440/= between 20th and 23rd July, 1992; K.Shs.22,505/= between 3rd and 13th August, 1992; K.Shs.7,725/= between 24th and 28th August, 1992; K.Shs.188,615/= between 1st and 14th September, 1992; and K.Shs.72,130/55 between 16th and 18th September, 1992. The sums of money reflected in each of the seven counts were the property of the Kenya Posts and Telecommunications Corporation and had come into the possession of the appellant by virtue of his employment as a Clerk

with that Corporation and concerned short falls in money orders purportedly issued by the appellant in the periods set out above and in the aggregate amounted to K.Shs.334,685/55. The evidence encompassing each of these counts at the trial of the appellant in the Principal Magistrate's Court at Nyeri was that of James Magondu Kamau (P.W.7), an Investigator with the Kenya Posts and Telecommunications Corporation, which, though it established the short falls reflected in each of the seven counts referred to above was nevertheless indeterminate as to the author of the money orders in respect thereof apart from an assumption that since the appellant was the Postal Clerk in-charge of Giakanja Post Office he must have been the maker of the said money orders. It is not without cause therefore that counsel for the appellant complained before us that the maker of the material documents was not established and on account of that neither of the first seven counts of stealing by a person employed in the public service contrary to section 280 of the Penal Code were proved against the appellant beyond reasonable doubt. Indeed, notwithstanding his supporting the appellant's conviction on all the first seven counts aforementioned, the Assistant Deputy Public Prosecutor, Mr. B'wonwonga, conceded that the evidence available against the appellant revealed a shortage of money which was not accounted for by him. That, without more, was inadequate for the purpose of proof of any of the first seven counts of stealing by a person employed in the public service as are mentioned towards the beginning of this judgment. In so far as those seven counts are concerned, we think that the appellant's appeal must succeed.

As regards the eighth count of fraudulent false accounting contrary to section 330(a) of the Penal Code, it was not in doubt whatsoever that the appellant destroyed documents which belonged to his employer, the Kenya Posts and Telecommunications Corporation, which had a bearing towards the investigation of the offences in the first seven counts referred to earlier in this judgment. These documents comprised of money order requisition forms for July, August and September, 1992; receipt book register; and office copy of money order journals. According to Jane Muthoni Muchiri (P.W.1), a work colleague of the appellant, who, besides Linus Maina Njema (P.W.8), an Investigation Officer with the Kenya Posts and Telecommunications Corporation, witnessed the tearing of these documents, the appellant was fully aware of what documents he was destroying since she had handed over to him a list of these documents which three days earlier had been taken by P.W.8 for the purposes of investigating the short falls reflected in the first seven counts referred to above. His tearing of these documents was without any doubt meant to thwart the investigation relating to the shortages reflected in the first seven counts above mentioned: and that was with intent to defraud his employer, the Kenya Posts and Telecommunications Corporation. The appellant's conviction on this count cannot therefore be faulted and his appeal in respect thereof is unmeritorious.

In the upshot, the appellant's appeal against conviction on the first seven counts of the offence of stealing by a person employed in the public service contrary to section 280 of the Penal Code is allowed but his appeal against conviction on the eighth count of the offence of fraudulent false accounting contrary to section 330(a) of the Penal Code is dismissed.

Dated and delivered at Nairobi this 4th day of December, 1997.

J. E. GICHERU

.....

JUDGE OF APPEAL

P. K. TUNOI

.....

JUDGE OF APPEAL

S. E. O. BOSIRE

.....

AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR