



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL 1500 OF 1993**

**REPUBLIC.....APPELLANT**

**VERSUS**

**CYRUS GICHURU NJIRAINI.....RESPONDENT**

**JUDGMENT**

This is an appeal by the State against the acquittal of the respondent (original accused ) by the learned Resident Magistrate Nairobi. He had been arraigned before the Court on several charges of forgery contrary to section 349 of the Penal Code; uttering a false document contrary to section 353 of the Penal Code; and stealing contrary to section 275 of the Penal Code. The details of the charges are set out in the judgment of the court below.

The respondent, Cyrus Gichuru Njiraini, was at the material time, the KPCU Depot Manager at Sagana. He was working under Mr Mathew Silvanus Nasibu (PW3) who was the KPCU Operations Manager based at the Nairobi head office. Sometimes in April, 1990, the respondent sought authority from PW3 to accomplish some work at his depot. These included the tarmacking of the compound at the depot, cleaning of the sewage system, etc. The request was duly approved. The respondent subsequently submitted certain receipts and vouchers for reimbursement of the money used at the depot. The vouchers in question were duly processed and approved. The Operations Manager (PW3) stated that he had no quarrel with the said documents and did not suspect anything unusual and duly approved them by signing the same. Among such documents were some 4 receipts, No 33 for 9,000/- for reimbursement of exhaustor charges incurred using motor vehicle Reg No KTN 927; there was also receipt No 111 for payment of Shs 9,000/- as reimbursement of payments made for the supply of 5 lorry loads of black murram using motor vehicle Reg No KWR 599; and again receipt No 59 for reimbursement of Shs 10,800/- for supply of 6 loads of murram using motor vehicle Reg No KWR 599; and finally receipt No 38796 for reimbursement of Shs 2,520/- being payment of re-filling some gas cylinders. Audit queries were subsequently raised on those payments and Kariuki Mwangi (PW1) who is an audit supervisor at the KPCU audit section then left for Sagana to verify the authenticity of those documents and the claims made. He was of the view that those claims amounting to approximately Shs 31,320/- had been dishonestly made by the respondent. The matter was then reported to the police and the respondent was subsequently arrested and charged with the various offences that were laid against him of making false documents (forgery), uttering them, and stealing the various sums of the money that he had been paid.

The evidence that were adduced in the court below is well summarized up in the judgment of the learned trial magistrate.

The respondent in his defence did not dispute the fact that all the documents complained of had originated from his Sagana depot, he knew about them, they were duly authorized and necessary reimbursement made by their headquarters. He explained that as the Depot Manager, he did not deal directly with supplies but with the farmers. He had under him 2 Asst managers and 7 foremen. He told the Court that the works in dispute were contracted to a Mr Muhia who is the proprietor of BP Petrol Station at Sagana. He is the one who supplied to his depot the materials complained of including the exhaustor services rendered. He also gave them additional 5 gas cylinders. After Mr Muhia had been given the said work, his Asst managers confirmed to him that such works and services had been rendered. He was given the receipts and he paid for them in cash and thereafter made a claim for reimbursement at their headquarters

which was duly authorized and he was paid back. In August, 1990, he was transferred from Sagana depot to Dondora as Clean Coffee Manager. He was later summoned to their head office where he was arrested by CID officers and later charged. He denied having committed any offence and stated that he was simply being framed up for reasons he did not understand as their accounts used to be checked fortnightly.

It became necessary in the opinion of the Court to have Mr Muhia to attend to testify in the case as a witness. The Court therefore invoked the provisions of section 150 of the Criminal Procedure Code (cap 75, Laws of Kenya), but it appears that despite several adjournments, the said Muhia who was a very prominent person in Sagana town, did not testify in the case.

In the judgment of the court below, the learned magistrate found as true the defence of the respondent that they gave the contract work at Sagana depot to Mr Muhia. The name of this man did not simply come up during the defence case but he had been mentioned during cross-examination of Shadrack Mutuli (PW4) who was the owner of the motor vehicles Reg No KUE 931 and KWN 599 mentioned in the receipts complained of. PW4 admitted that he had a brother who used to have a petrol station at

Sagana known as Muya Miano who could as well be Muhia to whom the respondent referred. In his evidence, PW4 did not rule out the possibility that his brother could have used his lorries without informing him. The trial court went further and found that the said Muhia could sub-contract the works given to him by the KPCU Sagana depot and his failure to testify in the case before her, left room for doubt in the prosecution case. She stated:-

“The fact that Muhia never gave evidence left room for doubt as to whether the accused acted with intent to steal from his employer or not. The accused may have been a victim and may have been misused by the persons he had sub-contracts with like Muhia as he claims in his defence. Muhia having not been called to give evidence leaves the Court with a doubt as to whether the accused did commit any of the charges as brought against him or not. The doubt is interpreted in his favour. I acquit him under section 215 CPC.”

I concur with the views of the learned magistrate referred to above and I find that the charges as laid against the respondent were not proved beyond all reasonable doubts. He was rightly acquitted on those charges and I see no merit in the present appeal by the State.

**Dated and Delivered at Nairobi this 27th day of July 1994.**

**S.O.OGUK**

**JUDGE**