



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**

**CRIMINAL APPEAL NO 61 OF 1989**

Kangethe.....appellant

v

Republic.....respondent

**Judgment.**

The appellant in this case was charged before the chief magistrate's court Nairobi, in two counts with stealing by clerk contrary to section 281 of the Penal Code. The particulars of the first count alleged that:

Between 10th May, 1986 and 10th December, 1986, being a cashier with Co-operative Insurance Ltd. stole cash Kshs.32,262.25 which came to his possession on account of his employer, Co-operative Insurance Ltd.

For the second count, the claimed particulars stated that:

Between 11th August, 1986 and 5th December, being a cashier with Cooperative Insurance Ltd. Stole cash Kshs.82,816.20 which came to his possession on account of his employer Co-operative Insurance Ltd.

There can be no doubt that the appellant who was employed as a cashier received money from his employer's customers and was expected to bank the money and make petty cash payments out of the funds he received. When the books and entries therein were inspected and scrutinized by a Senior Accountant (PW1) and an Internal Auditor (PW2) it was found that between May 10, 1986 and December 15, 1986, the appellant had a shortage of Kshs.32,262.75.

A subsequent and final checking disclosed a total shortage of Kshs.114,000 and there was overwhelming evidence that the appellant received the further sum of Kshs.82,618.25 between the period mentioned in the particulars of the second count.

In this appeal Mr Muchiri for the appellant has submitted strenuously that the appellant was prejudiced by the duplex charges preferred against him.

Mr Chung, the DPP contended that the separate unlawful acts of the appellant are so inter-related as to constitute a continuous taking. Even if there be duplicity, argued Mr Chunga, it is curable – on the evidence on record. We are unable to agree with some of the view of Mr Muchiri. It is clear that the particulars were bad in so far as the particulars of the second counts overlapped. It is clear that there was a continuous taking by the appellant. On the authorities as they now stand Republic v Mongella s/o Ngui (1934) 1 EACE 152, Ngidipe Bui Kapriram & Another v R. (1939) 6 EACA 118 and Attorney- General v Onyango Oludhe & Another, (1954) 21 EACE 238 – the question of prejudice is not available to the appellant as he was not in fact embarrassed or prejudiced in his defence. The appellant committed the offence of which he was arraigned.