

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 229 OF 1986 [2]

MATHAMBYO.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of stealing by a person employed in the public service contrary to section 280 of the Penal Code and was sentenced to imprisonment for 24 months.

The appellant was employed as slaughter house revenue collector of the Kitui County council. Amongst his duties, he was required to collect fees from butchers for every cow and goat slaughtered in Kitui and issue receipts for such payment. He was required to keep the record of each cow and goat slaughtered and receipts issued. At the same time a public health technician (PW 9) would enter such slaughter of animals which were brought to him for inspection, in his register.

The Treasurer (PW 1) of Kitui County Council received complaints from butchers that the appellant was not issuing receipts to them. He caused investigation which revealed that the register kept by the appellant did not tally with that kept by the public health technician. It appeared that the register kept by the technician for the period of April, 1984 to May 9, 1985 showed more animals every month than in the register kept by the appellant.

Five butchers (PW 2, 3, 4, 5, and 6) testified that during the material period the appellant did not issue receipts to any of them with the excuse that the receipt books were not there and that he would issue receipts some other time. He never issued receipts to any of them.

According to the records, it appeared that the appellant had collected about Kshs 10,380 from such butchers for which receipts were not issued and which were not shown in his register.

The appellant was arrested and charged. In his defence, the appellant claimed that he had lent some Kshs 100 from the council revenue to a senior officer and he was reprimanded. He insisted that he issued receipts to every person who slaughtered a cow or a goat.

In his petition, he claimed that he had maintained all records and nothing was missing. He said the witnesses had lied against him because of his employment.

The trial magistrate accepted the evidence of the record kept by the technician as well as evidence of the butchers but the appellant had not been issuing receipts any of them.

I have carefully gone through all the evidence adduced before the trial court. There is nothing in the evidence to suggest that either the technician or the butchers had ganged up to give false testimony to the trial court.

I am satisfied that the appellant was properly convicted. The appellant, an employee entrusted with collection of the revenue of the Kitui County Council was systematically over a period of about one year defrauding the council.

The sentence of 24 months imprisonment was well merited. The appeal is dismissed in entirety.

April 10 ,1987

ABDULLAH J