

REPUBLIC OF KENYA

Abraham v Republic

High Court, at Nairobi September 25, 1985

Mbaya J

Criminal Appeal No 454 of 1985

(Appeal from the 2nd Class District Magistrate's Court at Kiambu, J M Mbaka Esq)

Advocates

Appellant absent, not wishing to be present and unrepresented

W Ngugi (Miss) (State Counsel) for respondent

September 25, 1985, Mbaya J delivered the following Judgment.

It is conceded by learned state counsel, and I agree that this appeal must succeed. The appellant was charged with giving false information to a person employed in the public service, an offence contrary to section 129 (b) of the Penal Code. The particulars of the offence alleged that :

“On the June 15, 1984 at Ruiru Police Station He informed Inspector Kanute OCS Ruiru, that Inspector Lerai and his (police) party had stolen his Kshs 1000 which information he knew or believed to be false.....”

What happened is that a police party under the command of Inspector Lerai carried a search in the house of the appellant early in the morning of June 15, 1984. The appellant, who works as a night watchman was absent but his brother Adon Osman Ibrahim PW 2 and other relatives were there in the house. Inside the house there was a locked box where the appellant had kept Kshs 1000 which he and his relatives had collected a few days earlier for a Ramadhan party. The appellant had with him the keys for the box. During their search, Inspector Lerai and his party broke open the box. Though PW 2 did not actually see the policemen take the Kshs 1000 which he knew to have been kept in the box by his brother, he found the money missing, when he was returning the appellant's clothes into the box immediately after the policemen left. When later PW 2 informed the appellant about the missing money, the appellant proceeded to the police station where he made a report to Inspector Kanute. It is that report which culminated into the present charge, for which he was tried, convicted and sentenced to 1 ½ years' imprisonment.

At his trial and in his petition of appeal, the appellant insists that he lost his money when the police party broke open his box. Having re-evaluated the evidence, I am unable to say the appellant knew or believed he was giving false information. On the contrary there is cogent evidence that he had Kshs 1000 in the locked box which went missing after the policemen broke into the box. He had therefore reason to believe and report that the money may have been taken by the policemen. In the circumstances, I allow this appeal: quash the conviction, and set aside the sentence. The appellant will be released forthwith.