



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL APPEAL 138 OF 84

(From Original Conviction and Sentence in Criminal Case No 6156 of 1983 of the Resident Magistrate’s Court at Kibera, P E MAUNDU Esq)

PATRICK MUKABIAPPELLANT

V e r s u s

REPUBLIC RESPONDENT

CORAM PORTER J

Appellant absent, unrepresented and not wishing to be present,

C W Gatonye (Principal State Counsel) for Respondent. -----

J U D G M E N T

The appellant was charged in the court below with theft, contrary to section 275 of the Penal Code.

He was convicted after trial and sentenced to 6 months imprisonment and now appeals.

The case against the appellant was that the complainant gave to the appellant, who was his “brother,” Shs.2860 to keep securely for him as he was going home. However, he missed the train and went to the house of the appellant to ask him to return the money. The appellant said that he had gone to put the money in the cooperative society, and had met another man, a Ugandan, to whom he had given the money. The record is not clear at this point, but it looks as though something went wrong and the police were involved in chasing that person for some reason, probably to do with the money.

He was said going to bring the money the next day. The money was a grant from an American and was in Kenya shillings. Two witnesses were called to substantiate the fact that the money was handed over and that it was in Kenya shillings.

The appellant said that he was given the money in dollars in order to change them into shillings, that he went to do so, and the man he got to do the exchange cheated him. He called witnesses to establish that dollars were involved, and one of them said that, he saw the dollars on the table of the house of the appellant. I suppose it is fair to say that, if the money was in dollars and the appellant was expected to exchange them on the black-market, it would be unlikely that the prosecution witnesses would say so.

This does not seem to have been considered by the learned trial magistrate who thought that, “maybe the appellant was a dealer in foreign currencies”. Maybe he was, but it was for the prosecution to prove, which they did not. There, certainly, were some dollars around and the appellant certainly explained, them by saying that he had them for his cousin. It is not quite so easy, therefore, to dismiss the account of the appellant and the evidence called in support of it, as would appear from the judgment. There was some substance in the account of the appellant which was to be negatived by the prosecution.

On the evidence available, the appellant always said that someone had taken the money. More evidence for the prosecution was required to convict on that evidence.

The evidence of the prosecution witnesses, with some careful changes to allow for them trying to cover themselves in respect of the possible involvement with illegal dealing in currency, was not that dissimilar from the evidence of the appellant.

There was a doubt in this matter, which should be resolved in favour of the appellant.

Appeal allowed, conviction quashed, sentence set aside. Dated and delivered at Nairobi, this 6th day of December, 1984.

DAVID C PORTER

JUDGE