



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 153 OF 1982**

**RICHARD RURI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The appellant was on December 2, 1981 convicted of ten counts five of which were for the offence of forgery contrary to Section 349 of the Penal Code (Cap 63) and the other five were for the offences of fraudulent false accounting contrary to Section 33 of the Penal Code (Cap 63) and he was sentenced to twelve months' imprisonment on each count and the sentences were ordered to run concurrently by the First Class District Magistrate sitting at Kerugoya. He now appeals to this court against those convictions and sentences.

The appellant was a leaf collection clerk at Gitondo tea leaf buying center during the month of February, 1981. According to the appellant one Jackson Muchira complained to him on February 7, 1981 that the weight of his tea leaves was not properly recorded. He told this person to come on February 9, 1981 so that e could add up the weight of the tea leaves he had delivered from his receipts. According to the appellant, this he did and found that the tea leaves delivered to the factory as regards this person was in excess by 18 kg than what was recorded in his card. Appellant therefore altered the card and the duplicate receipts accordingly since Jackson Muchira (PW 3) failed to give him the original receipts. The appellant denied having made these alterations either with intent to defraud or fraudulently. However, according to Jackson Muchira (PW 3) the appellant had approached him and solicited to increase the weight of the tea leaves he had delivered and in return the appellant had to receive cents fifty for every added kilogram. According to Jackson Muchira this was when he first met the appellant on February 9, 1981. It is as a result of these alterations that the offences in counts 2 to 10 arose with count one arising out some alteration by the appellant on the duplicate receipt belonging to one Jane Wanjiru (PW 4) when the appellant had not met before.

The appellant does not deny having made these alterations but argues that he did so not so as to gain anything but to rectify whatever mistakes were there. In his judgment, the learned trial magistrate found that the appellant acted contrary to the regulations and therefore believed the evidence of the prosecution witnesses particularly that of Jackson Muchira. He found that in making these alterations the appellant had the intention to defraud the Kenya Tea Development Authority.

It is important to note that Jackson Muchira had made several attempts to secure the job the appellant was doing without any success. It is also important to note that the appellant alleged that the leaf officer (PW 1) had a long standing dispute with the appellant on the ground that the appellant was proud and rude because his uncle was a director of Kenya Tea Development Authority. Neither of these two allegations were disproved by the prosecution nor did the learned trial magistrate make any mention of them let alone any findings on them. These allegations tinged the credibility of PW 1 and PW 3 as against the appellant and the learned trial magistrate ought to have directed his mind on them and either discard them or otherwise. But what is vitally important was the factory-weight receipts which should have clearly indicated whether the appellant's alterations were forgeries or not. These were never tendered in evidence nor was any evidence led in their respect. This therefore created a doubt as to whether the appellant in making these alterations he was merely rectifying some errors although contrary to regulations as found by the learned trial magistrate or he was rectifying these documents. Similarly, in the absence of the factory-weight receipts it is doubtful whether the entries in the duplicate receipts mentioned in counts 6 to

10 were made fraudulently or purely to rectify some errors. For these reasons, I am of the view that there existed some reasonable doubt as to whether the appellant committed the offence stipulated in counts one to ten and he was entitled to the benefit of doubt. I would in the circumstances allow the appeal against convictions and sentences. The convictions are therefore quashed, sentences set aside and the appellant should be set at liberty forthwith unless held for any other lawful cause. Order accordingly.

**Delivered and dated at Nyeri this 13th day of August, 1982.**

**J E GICHERU**

**AG JUDGE**

**Judgment delivered in the presence of Mr Muchira for the appellant and in the presence of Mr Metho for the respondent.**

**JE GICHERU**

**AG JUDGE**