REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 563 OF 1981

FURUKHA .....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted by the First Class District Magistrate at Nakuru of corruption contrary to Section 3(1) of the Prevention of Corruption Act (Cap 65) and sentenced to eighteen months' imprisonment.

At the relevant time the appellant was employed as a Corporal in the Kenya Police Force and was the Officer in Charge of the crime branch at Bahati Police Station. His superior and the officer in charge of the police station was Inspector Kimani (PW 5). The facts of the case have been set out at considerable length in the judgment of the trial magistrate. We need not repeat them but we will only summarize them very briefly to set the stage for consideration of the various grounds of appeal raised by the appellant.

In January, 1981, a grand child of the complainant who was less than one month old, had died. There was some suggestion that the death was not natural so it was decided to report the mater at Bahati Police Station where Inspector Kimani directed the complainant to the appellant. After some delay, the appellant recorded statements and then informed the complainant privately that it was a very serious matter and could be settled on payment of Kshs 2,000. The complainant told him that money was no problem and that he would see about it after a post mortem report in respect of the child had been received. The post mortem revealed nothing sinister except that some organs of the child were removed for further examination. The complainant then went away to Kisumu where he lived and worked.

Sometime later, the complainant's wife Mary Njeri and daughter Joyce were called by the appellant to Bahati Police Station where he told the wife (PW 4) that the medical report was bad and instructed her to tell her husband to bring to him Kshs 2,000. Mary Njeri and Joyce were also placed in custody by the appellant for some time but ordered to be released by Inspector Kimani when he found that no offence was disclosed to have been committed by them upon perusal of the inquest file. Mary Njeri then wrote a letter to the complainant telling him of the developments in the matter. Later, at the Bahati Police Station when Inspector Kimani saw PW 4 there he asked her what she was doing and she replied that the appellant had been troubling her and was demanding Kshs 2,000 to Kshs 3,000 from her. Inspector Kimani took her to Supt Kabetu who was in charge of Criminal Investigations for Nakuru District. Supt Kabetu interrogated her and then instructed her to ask her husband to come and see him. In the meanwhile the appellant had sent a message to the complainant at Kisumu with PC David Gitau (PW 7) asking him to come to Nakuru and see him regarding the inquest file.

The complainant came to Nakuru and saw Supt Kabetu, who then instructed him to play along with the

appellant. The complainant had some meetings with the appellant and after haggling over the amount which the appellant wanted in order to drop the charge against his daughter Joyce, the complainant agreed to pay him Kshs 500.

Supt Kabetu reported the deal to the CID Headquarters at Nairobi and Inspector Khalil (PW 2) and Inspector Kiilu (PW 3) of the CID Headquarters were ordered to proceed to Nakuru with five notes of Kshs 100 each whose serial numbers had been noted by Inspector Khalil in his note book and by Inspector Kiilu in his office in Nairobi. When they reached Nakuru they met the complainant and it was agreed that when the complainant gave the money to the appellant he would put on a white hat as a signal. The complainant and the appellant met at various places in Nakuru being kept in sight by the two inspectors and eventually when the complainant handed over the money to the appellant and made the pre-arranged signal, the two inspectors approached him, introduced themselves as CID officers and recovered the sum of Kshs 500 which they had earlier given to the complainant, from him. The appellant was then charged with the present offence.

In his testimony before the lower court the appellant admitted that he was involved in the investigations regarding the child's death but stated that he was assisting the investigating officer who was Inspector Langat. He continued that the complainant wanted him to remove, from the police file, a letter which incriminated his daughter Joyce but that he refused to do so, that in May, 1981, the complainant again wanted that letter to be removed but he refused again to comply, that on May 20, 1981, the complainant kept pestering him and eventually the two inspectors stopped him and ordered him to remove from his pocket all the money that he had so he took out Kshs 510 which was all his money, but they alleged that he had corruptly received the sum of Kshs 500 out of that money.

With the above brief summary of the evidence in mind we have carefully considered the appellant's written grounds of appeal as well as the verbal submissions made by him before us. The conversation between the complainant and the appellant should have been recorded, if possible and the currency notes handed over to the complainant to pass on to the appellant should have chemically treated but the failure to do so is not necessarily fatal. Similarly the calling of Mr Sokhi and Geoffrey was not obligatory upon the prosecution and the defence could have called them if it so wished.

There were some contradictions and inconsistencies in the evidence of the two inspectors who arrested the appellant but we do not consider them of any significance. The main issue was that the appellant contended that the money recovered from him was his own money while the prosecution case was that the sum of Kshs 500 comprising five currency notes of Kshs 100 each was the money which he had corruptly received from the complainant and a record of numbers thereof had been earlier made by the two CID Inspectors from Nairobi. The learned magistrate was quite entitled to accept the prosecution case as he did and reject the defence. There was absolutely no reason why the officers from Nairobi should have conspired to frame the appellant as alleged by him. Similarly Inspector Kimani and Supt Kabetu were only doing their duty and there was no reason for them to go to the trouble of trumpeting up evidence if the appellant is to be believed.

Upon our own independent assessment and evaluation of the evidence on the record we are satisfied that the appellant was properly convicted upon overwhelming evidence.

The sentence awarded to him is by no means excessive. This appeal is dismissed.

Dated and delivered at Nairobi this 4th day of October 1982.

S.K SACHDEVA **A.M COCKAR**

JUDGE **JUDGE**

Cases

Statutes

Advocates

Njoroge Mugo for Respondent