IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: LAW, V-P., MUSTAFA & MUSOKE, JJ.A.)

CRIMINAL APPEAL NO. 104 OF 1976

BETWEEN

PATRICK MUSOBA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High court of Kenya at Mombasa (Mr. Justice Sheridan) dated 7th October, 1976

in

CRIMINAL APPEAL NO. 96 OF 1976

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JUDGMENT OF THE COURT

The appellant was convicted of stealing Shs.29,477/-` the property of his employers the Ministry of Tourism and Wildlife, being the proceeds of a cheque for that amount which came into his possession in the course of his employment, contrary to section 280 of the Penal Code.

The appellant made no defence of any sort at his trial, but his defence is apparent from his voluntary statement made to Inspector Sambenje when charged and cautioned with this offence. He admitted having received the cheque, but sad he had left it on his table on Saturday 30th November, 1974, and that it was not there when he went to work on the following Monday.

However, a cashier at the National Bank of Commerce, Mr. Tabulo, deposed that he cashed this cheque for the appellant, whom he knows well as a regular customer, on the 30th November, and handed him the proceeds of Shs.29,477/-. Mr. Diniz for the appellant has pointed to unsatisfied onus evidence given by various prosecutors without which could give rise to suspicion that other persons may have been involved in this theft, but the evidence against the appellant was in our view overwhelming on the fact. A fraud of the type disclosed in this case usually involves the assistance of accomplices.

The points of law argued on behalf of the appellant on this second appeal are that the judgment of the trial magistrate was incurably defective as not complying with section 169 of the Criminal Procedure Code, and that the first appellate judge did not submit the case to a full fresh and exhaustive evaluation. Whatever the defects of the original judgment we agree with the first appellate judge that these defects were curable, and. we are satisfied that no valid critism can be levied at the judgment delivered by the first appellate judge. He evaluated the evidence fully, and came to the conclusion that even if the magistrate had properly directed himself, he must have come to the conclusion that the appellant was guilty. We agree, and see no merit in this appeal, which is hereby dismissed.

Dated and delivered at Nairobi this 14th February, 1977.

E. LAW

.....
VICE-PRESIDENT

MUSTAFA

.....
JUDGE OF APPEAL

S. MUSOKE

.....
JUDGE OF APPEAL

I certify that this is a

true copy of the original.

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DEPUTY REGISTRAR