



REPUBLIC OF KENYA



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**Republic v Amokola (Anti-Corruption Case 6 of 2018) [2019] KEMC 4 (KLR)
(Anti-Corruption and Economic Crimes) (3 April 2019) (Judgment)**

Republic v Joshua Okanga Amokola [2019] eKLR

Neutral citation: [2019] KEMC 4 (KLR)

**REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION CASE 6 OF 2018**

DN OGOTI, CM

APRIL 3, 2019

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSHUA OKANGA AMOKOLA ACCUSED

JUDGMENT

1. Joshua Okanga Amokola (hereinafter, the accused) faced five counts. The first 3 counts were offences of receiving a bribe contrary to section 6(1)(a) as read with section 18 as read with section 27 of the Bribery Act No. 47 of 2016 whose particulars were as follows:-

Count I: On 13th June 2014, at General stores within Nairobi City County, being a public officer, to wit the Nairobi City County enforcement officer of the rank of Corporal, requested for a financial advantage of Kshs.3000/- from Pasiliano Okou Olinga as a benefit so as to release a motorcycle Reg. No. KMCN 462H, which he had impounded from the said Pasiliano Okou Olinga and detained at General stores along Haile Selassie Avenue for an alleged offence of making a wrong turn, a matter to which the said public body was concerned.

Count II: On 16th June 2014, at General stores within Nairobi City County, being a Public Officer, to wit the Nairobi City County enforcement officer of the rank of Corporal, requested for a financial advantage of Kshs.3000/- from Pasiliano Okou Olinga as a benefit so as to release a motorcycle Reg. No. KMCN 462H, which he had impounded from the said Pasiliano Okou Olinga and detained at General stores along Haile Selassie Avenue for



an alleged offence of making a wrong turn, a matter to which the said public body was concerned.

Count III: On 16th June 2014, at General stores within Nairobi City County, being a Public Officer, to wit the Nairobi City County enforcement officer of the rank of Corporal, requested for a financial advantage of Kshs.3000/- from Pasiliano Okou Olinga as a benefit so as to release a motorcycle Reg. No. KMCN 462H, which he had impounded from the said Pasiliano Okou Olunga and detained at General stores along Haile Selassie Avenue for an alleged offence of making a wrong turn, a matter to which the said public body was concerned.

In count IV the accused was charged with the offence of obstruction contrary to section 66(1)(a) as read with section 66(2) of the *Anti-corruption and Economic Crimes Act* No. 3 of 2003 (ACECA). The particulars were that the accused on 16th day of June 2014, at Nairobi City County General Stores within Nairobi City County, without justification or lawful excuse obstructed Ethics and Anti-corruption Commission investigations namely Samuel M. Njiru, Michael Ekai and Caleb Okoth from arresting him by inciting his colleagues to rescue him from lawful custody while the said investigators were effecting a lawful arrest.

2. Last in count I, the accused was charged with the offence of concealing of evidence contrary to section 66(1) as Read with section 66(2) of *ACECA*. The facts were that the accused on the 16th day of June 2014 at Nairobi City County General Stores within Nairobi City County being a public officer, to wit the Nairobi City County enforcement officer of the rank of Corporal, concealed three (3) pieces of Kenyan currency of denomination of 1000/- which you had reasonable ground to believe would be used as evidence in an investigation of corrupt conduct against you. The accused denied the offences and the prosecution called 10 witnesses.
3. PW1 PASILIANO OKOU OLUNGO was the complainant. He testified that he was a boda boda rider who was operating within the Nairobi CBD. He operated motorcycle registration No. KMCN 462H on 13/6/2014 when a Mfangano Avenue he was stopped by three people as he dropped a passenger. Among the three, one was a woman and they were all strangers and were no in any uniform. They pushed his motorbike to their stores along racecourse road where two of them left and he was left with one. He pleaded with one left behind to release his bike but was told it could only be released if he parted with Kshs.3000/-. This witness asked to be let go so that he could go and look for the money. The motorbike had been pushed to their general stores. He reported the matter to the EACC. Since it was a Friday he was advised to go back the following Monday on 16/6/2014. At the EACC on 16/6/2014, he was inducted on how to use a recording gadget. He was also given Kshs.3000/- of S/ Nos 1. DC7432342. 2. DF1845855 and 3. DA1408960 which was the marked and photocopied (MFI 1) (P. Exhibit 1) and inventory thereof prepared P. Exhibit 2. After signing the inventory, the money was treated and put in a ½ khaki envelop. The accused who had introduced himself as Joshua was not at his place of work when this witness reached there. But as this witness was leaving, he bumped into the accused and was not able to switch on the recording gadget. The accused asked whether he had carried the money and PW1 told him he had only Kshs.2000/-. He said it had to be 3000/- as they were 3 and this witness asked for time again to go and add up the money to make it 3000/-. The accused had warned him not to give treated money. This witness was under instructions not to touch the money but only when giving it out. He went and met the officers he was with who gave him the Kshs.3000/-. As he went back, the accused had moved towards the gate of St. Peter Clevers Primary School where they met. The accused asked for the money and he was given. He then advised the witness to wait for the bike. As the accused was heading into the gate he was arrested by PW10 who was with PW6. As the accused was being arrested he resisted and fought the EACC officers. Two other officers, one Mbithi



- and PW4 who were trailing then joined PW10 and PW6. Accused yelled and caused a commotion attracting his colleagues who were nearby and a fracas ensued. By this time accused hand had been handcuffed. The officers were overpowered by the county askaris and accused managed to escape. The recorder S/No. 15082123 was produced as P. Exhibit 3.
4. In cross examination this witness informed the court that he was arrested by 3 officers of the City County. The one who was left behind is the one who demanded for the money. That he could not record the accused as the accused appeared suddenly and he could not switch on the gadget due to lack of time.
 5. PW2 was Duncan Odoyo Oyugi an Assistant Director Human Resource Department in charge of appointments at the Nairobi City County. The accused was one of them and was appointed as a watchman in 1994. He was promoted with time. When he was arrested by EACC, he absconded duty. He was given a show cause letter and was eventually dismissed for desertion in July 2014. He had been arrested with EACC officers but escaped with handcuffs and Kshs.3000/-. He was finally dismissed on 20/3/2015. He appealed later on but the appeal was dismissed. This witness produced the following pieces of evidence as exhibits. The letter of appointment dated 18/1/1994 was P. Exhibit 4. Letter of Promotion dated 27/5/2013 – P. Exhibit 5. Advisory committee minutes dated 20/3/2015 P. Exhibit 6. Dismissal letter from the county service board dated 26/3/15 P. Exhibit-7. Appeal against dismissal dated 10/12/2015 P. Exhibit 8 and communication from public service commission dated 26/3/2017 P. Exhibit 9. In cross examination this witness told the court that they were informed by the chief officer compliance and disaster management that accused had escaped from the EACC officers. That he had come to court to produce accused records and not veracity of the complaints against accused. The accused and accused had no so such complaints of bribery previously.
 6. PW3, PW4, PW6 and PW10 were the officers actively involved in the case and their evidence is almost similar. They were all employees of the EACC as investigators. PW3 on 16/6/14 was called by his director and briefed about a matter being investigated by PW10, PW6 and PW4 that had been attacked at the General Stores of the Nairobi City County (NCC) that and was tasked to move to the scene to ensure their safety of the officers. He moved to the scene and found PW4, PW6 and PW10. They informed him that they had arrested one Joshua for soliciting Kshs.3,000/-, managed to handcuff him but had been rescued by city askaris. In the process had lost the handcuffs and Kshs.3,000/- which the suspect had received and ran away with during the rescue by city askaris. They arrested one Dennis who was alleged to be involved. On the following day which was 17th they went to the inspectorate at city and met one a Mr. Wambugu one of the senior managers who agreed to produce Mr. Joshua their employee and agreed to conduct an ID parade to identify other suspects the following day 18/6/14 which never materialized. When they went to the General stores in the company of city inspectorate officers, word went round of the intended identification parade. The NCC officers left one by one and they were left with nobody to identify. In cross examination he informed the court that he was not present when the accused was arrested.
 7. PW4 Michael Ekai was with PW4, Reuben Nyagi, PW10 Samuel Mukundi and PW6 Caleb Okoth when PW1 reported the request for Kshs.3,000/- in order to have his motor cycle released by the county askaris. Njagi was requested and treated the Kshs.3,000/- and they left to the scene. PW1 had been instructed to record the conversation between him and the accused. He alleged that PW1 did the recording which after they listened to established a demand of Kshs.3,000/-. After that PW10 handed it over to accused on demand. They also fitted him with the recording device and trailed PW1 as he went to meet the accused with a pre-arranged signals to inform him then on delivery of the money. After PW1 performed the pre-arranged signal. They moved towards the accused. PW10 and PW6 approached the suspect and as they introduced themselves, he started fighting them. This witness



- moved to re-inforce the others. At this point the accused screamed which attracted members of the public and accused colleagues who assisted accused to escape with handcuffs in his right hand and Kshs.3,000/-. Accused colleagues also escaped but one Dennis Ongati was arrested and escorted to the Integrity Centre. In cross examination he reiterated his version of the story. PW5 is the one who treated the Kshs.3,000/- to be used as trap money. He then prepared an inventory of the same (P. Exhibit 2). They had S/Nos. DC7432342, DF845855 and DA1408966 which he also made a photocopy thereof and was produced as (P. Exhibit 1).
8. PW6 Caleb Okoth inducted PW1 on how to operate an audio visual recording device. He also went to the scene. At the scene, PW1 who went to meet the accused returned and told them that he was unable to record the suspect as the suspect had appeared abruptly before he could switch it on and that the suspect had warned PW1 not to take to him money treated by the EACC. At the scene they had followed PW1, whom they saw meet somebody who they realized was the accused. After a short conversation they saw PW1 hand over the money to accused. They then approached the accused and introduced themselves as officers from the EACC and informed the accused that he was under arrest. The accused turned wild and started fighting them. He held this witness by the neck and tore his shirt (P. Exhibit 10). With efforts of the others they overpowered accused and handcuffed him by his right hand. The accused shouted and alerted his colleagues at the General Stores. The accused colleagues responded and overpowered the EACC officers and the accused managed to escape with the handcuffs and the Kshs.3,000/-. The incident was later reported to the Kamukunji police station *vide* OB extract 16/6/14 (P. Exhibit 11). They later went to the General Stores where they managed to identify one officer whom they arrested. In cross examination this witness informed the court that they were 10 metres away from PW1 when they followed him. That they arrested the accused after introducing themselves.
 9. PW7 was Bernard Nyanchiri who was then a superintendent with the city inspectorate department. The accused was one of those he deployed to the lower part of town on 16th June 2014. That included Tom Mboya and Race Course roads to control handcuffs and motorcycles going against traffic and those parked obstructively. At around 11:30a.m. one of the security men deployed at the General Stores called him and informed him that he had seen Joshua Amokola struggling with plain clothes police officers who wanted to arrest him and managed to escape. He was asked by his director to go to the scene. At the scene the security officer informed him that he had earlier seen accused with a man he believed was the owner of KMCW 462H. The following day Joshua did not go back to work, his phone was also switched off. After 14 days they wrote him a letter of absconding which led to termination of his duties. In cross examination he said that he did not see accused impounding the motor cycle, he is the one who assigned him the race course road and general stores. He was also not aware that accused was sick leave on 17th of June 2014. Further that D. Exhibit 3, a sick off authorization No. 998 of 17th June 2014 from Blitz Healthcare was not in their records.
 10. PW8 Dennis Mbaabu had leased his motor vehicle registration number KMCW 462H to PW1. On 13/6/14 PW1 called him and told him that the motor cycle had been detailed by county askaris who were demanding money from him because he was on the wrong side of the road and had decided to report to the EACC. On 16/4/14 he visited the NCC offices and was not attended to by workers because they said they had disturbed their fellow colleagues. He was not assisted and had to pay Kshs.14,000/- in order to get his motor cycle released. He produced the log book as P. Exhibit 12. The evidence of PW9 was akin to that of PW3.
 11. PW10 Samuel Mukundi Njiru an investigator from EACC investigated this matter. He reiterated the story of PW2 and produced P. Exhibit 13 the initial report by complainant. He provided the Kshs.3,000/- for the operation. He also went to the scene and trailed PW1 who had been trained on



how to use a recording gadget. He stayed opposite the stores. He saw PW1 engage with an adult and then return to where they had parked his vehicle. PW1 explained that the accused emerged before he could switch on the recording gadget and also that the accused had warned him against giving him treated money. He then decided to send PW1 back to accused and agreed on a simultaneous operation which included sending him with the treated money and the expecting PW1 to do a recording. So they gave PW1 the money, the recorder and they trailed him. They took strategic positions next to where accused and complainant stood. PW4 and another officer called Mbithi remained on the other side of the road. This witness saw PW1 remove money from his pocket and hand over to accused whom this witness had seen before during the 1st recording. Accused received the money by his right hand counted it and pocketed it in the back right pocket of his trouser. They approached accused and he asked accused for the money had received after introducing themselves. Accused then engaged them in blows and called for assistance from his colleagues. PW4 joined them and managed to handcuff the accused right hand. Accused was shouting “waizi, waizi” and people who heard like conductors and drivers joined and managed to rescue him. Accused fled with the Kshs.3,000/- and the handcuffs. Reinforcement was called for and when it arrived NCC Officers ran away. One by name Dennis Ongati who was spotted was arrested. He produced D. Exhibit 15 a Staff Identity Card belonging to accused. He was told action had been taken against accused by the employer, with assistance of accused colleagues, this witness managed to arrest accused within the Nairobi CBD (Central Business District) in 2018. He also produced P. Exhibit 13 the initial report by PW1. In cross examination this witness informed the court that PW1 was not able to record anything. During the operation he was 6 to 7 metres away from the accused. He saw the accused receive the money but did not retrieve the motorcycle. That there was no record of the store to show the person who booked the motor cycle.

12. The accused gave a sworn statement in his defence. He accepted being at the scene of arrest on 16/6/2014 at 11.30a.m. That he was surrounded by about five people who did not identify themselves and were not in uniform. They stepped on his left waist and the public went to his rescue and removed him from there. That night he felt pain and called PW7 and told him he was going to hospital. He produced the sick sheet as D. Exhibit 3. He then proceeded to Kenyatta National Hospital (KNH). He produced D. Exhibit 4 the attendance card from KNH. He also produced a receipt dated 23.6.2014 as D. Exhibit 4 (b) for Kshs.1,000/- which he claimed to have paid for the x-ray calls to PW7 were not answered. He denied having arrested motorcycle registration No. KMCW 462H and demanding for Kshs.3,000/- arguing that the charges against him are false and that he was arrested on 14/5/2018 while all the time he had been in Nairobi. In cross examination, he informed the court that he had worked for 22 years. That he was attacked from behind and reported the matter to Kamukunji Police Station though he did not produce an OB, and was not issued with a P3. He used to control handcarts and did not detain motorcycles. He could not remember when he called PW7 who told him he had seen his letter of interdiction. He could report to the office sign once weekly and signed up to 30th of a month he could not remember when he was given a letter of termination. The above is the evidence this court is supposed to rely on in order to come to a finding as to whether the charges against the accused person were proved beyond all reasonable doubt.
13. The following are the issues for determination:
 1. Whether the accused requested for a financial advantage from Pasiliano Okou Olunga (PW1) as a benefit to release motor cycle registration No. KMCW 462H on the 13th and 16th June, 2014.
 2. Whether the accused received a financial benefit of Kshs.3,000/- from PW1.
 3. Whether the accused obstructed officers from the EACC from arresting him and inciting his colleagues to rescue him from lawful custody.



4. Whether accused concealed 3 pieces of Kenya currency of denomination of 1,000/- to be used as evidence against him.

1. Whether the accused requested for a financial advantage from PW1 as a benefit to release motor cycle registration No. KMCU 462H on the 13th and 16th June,2014.

14. There is no dispute as to whether accused was a Public Officer working for the Nairobi City Council (NCC) as at 13th June, 2014. PW2 and PW7 testified that accused was one of their employees. On 13th June, 2014 PW7 testified that he had assigned accused duties of controlling motor cycles and handcarts along Tom Mboya Street and Racecourse Road. PW1 testified that he was accosted by 3 people who detained his Motor Cycle for stopping at a wrong place. They pushed his motorbike to their stores along Race Course road where two left and was left with one. He pleaded with the one left to release his motor cycle but was informed the same could only be released if he gave Kshs.3000/-. PW1 asked this person to let him go and look for the money. PW1 then reported to the EACC who organized for a trap on 16th June, 2014 which was a Monday. 13th June, 2014 was on a Friday and PW1 was advised by the EACC Officers to avoid the weekend. On 16th June, 2014, the accused who had introduced himself as Joshua was not at his place of work. As PW1 left the accused placed of work he bumped into the accused and accused asked him whether he had carried the Kenya shs.3000/= when PW1 told him he had only Kshs.2000/-, the accused informed PW1 that he had to part with Kshs.3,000/- as they were 3. PW1 then asked for more time to go and look for the extra Kshs.1,000/-. This led to the arrest of accused. What comes out clearly is that it is the accused who requested for Kshs.3000/- when the colleagues had left and also demanded for a full amount of Kshs.3000/- later claiming it was to be shared between 3 of them. In his defence he only talked of the events of 16th June, 2014. it is hence very clear that the requested of 13th June, 2014 was specifically not controverted and that of 16th June, 2014 was made a fresh after being offered Kshs.2000/- which accused refused.

2. Whether the accused received a financial benefit of Kshs.3,000/- from PW1.

15. PW1 received the 1st request as found above on 13th June, 2014. he then sought for time to go and look for it. In the meantime, he reported to the EACC who organised for a trap on the 16th of June, 2014. On 16th of June, 2014, PW1 was given the treated money. He met accused who refused to take Kshs.2000/-. PW1 then returned to the EACC Officers and was given an extra Kshs.1000/. He then returned to hand it over to accused. In the meantime, EACC Officers were following or trailing PW1. This were PW4, PW6 and PW10. According to PW4, when PW1 performed the pre-arranged signal, PW6 and PW10 moved to enforce the arrangement and accused started fighting them and screaming. PW6 who trailed PW1 saw him hand over the money to the accused after a short conversation. PW10 who was with PW6 saw accused receive the money by his right hand and placed it in his right back trouser pocket. They went introduced themselves and a fight ensued. I find that as soon as the accused was seen receiving the money from PW1, the offence of receiving was complete. Hence I find as a fact that accused received the Kshs.3,000/-.

3. Whether the accused obstructed officers from the EACC and inciting his colleagues to rescue him from lawful custody.

16. PW1, delivered the Kshs.3,000/- to accused and then signaled the EACC Officers who moves to arrest the accused these were PW4, PW6 and PW10. At that point after the officers, introducing themselves to accused he started fighting them. PW4 moved in to assist his colleagues. Accused then yelled calling for assistance from his colleagues. This was after PW4, PW6 and PW10 had overpowered accused and handcuffed his right hand. He called out “waizi waizi” meaning “thieves thieves” His colleagues



and members of the public responded and accused was rescued and managed to release himself and escape away from PW4, PW6, and PW10. He escaped with the Kshs.3,000/- and the handcuffs. This piece of evidence was not controverted. PW3 and PW9 were officers of EACC who responded as re-enforcement to assist their colleagues. They arrived after the event. PW7 had also been informed that the accused had been seen struggling with plainclothes Police Officers who wanted to arrest him. This information was by one of the security officers. The accused then absconded duty which led to his dismissal from the Nairobi City Council (NCC). The Kshs.3,000/- was not recovered. The handcuffs was also not recovered. The accused also admitted that he had an encounter with people he did not know. The court did not believe that he did not know them because all evidence points to the fact that they introduced themselves. In any case he fought them after receiving the benefit of Kshs.3,000/- which was given to him by PW1. The court finds as a fact that the accused obstructed officers who were executing their legal mandate to have him arrested. The court also found that simultaneously the accused went away with the Kshs.3,000/- which were pieces of evidence intended to be used against him as evidence. Further there is that evidence of PW3 and PW4, officers of the EACC who were detailed to go and rescue their colleagues PW4, PW6 and PW10. On reaching the scene of the fracas, the accused had already been rescued. The trio i.e. PW4, PW6 and PW10 informed them that they had arrested one Joshua, the accused for soliciting Kshs.3,000/- handcuffed him but had been rescued by City Askaris and had managed to run away with Kshs.3000/- and the handcuffs. This explanation by the three witnesses to PW3 and PW7 were the first hand information. Report to person in authority which aspect of the case against the accused was not controverted and placed the accused squarely at the scene of crime.

17. Consequently, I do hereby opine and arrive at a conclusion that the Republic established all the five charges against the accused beyond all reasonable doubt and proceed to convict him in all the five counts under section 215 of the Criminal Procedure Code [CPC] Cap 75 Laws of Kenya.

D. N. OGOTI

CHIEF MAGISTRATE

DATED AND DELIVERED IN OPEN COURT THIS 3RD DAY OF APRIL, 2019.

In the presence of:

Sala Abagira Court Assistant

Raniu holding brief for Owino for the DPP

Mr. Karei for Defence

D. N. OGOTI

CHIEF MAGISTRATE

3.4.2019

Court – Judgment delivered.

D. N. OGOTI

CHIEF MAGISTRATE

3. 4.2019

Court – Any records

M/s Kaniu – Accused does not have a past record.

Mitigation



Mr. Karei – We note provisions of sections of Law under which he was charged. Considering the amount of Kshs.3000/=, we pray that accused be given a lenient fine. Furthermore he is a 1st time offender without previous records. Also accused is a father and husband and currently the sole bread winner. Any custodial sentence would greatly harm his family of four children all going to school not to mention his Uncles and Aunties . He is remorseful for any conduct which has led to his conviction today.

SENTENCES

The court appreciates the mitigation by the accused. The court has been asked to consider among others the amount of money involved. However, the courts note as follows. Corruption is corruption in whatever form and whatever amount involved. Corruption is usually in the mind of the offender. There are provisions in our Laws that provide a soft landing for accused who know that they have committed offences this are found between section 137 [a] to 137(d) of the Criminal Procedure Code. When an accused knows he has committed an offence and takes the court through the whole log of a trial, he must then be ready for the consequences having caused the use of tax payers money and resources that would have been used elsewhere. The case has taken about 1 year.

Having observed as above the accused is sentenced to a fine of Kshs.150,000/= on each count in default to serve a sentence of 1 year imprisonment in each count. Count II and III to run concurrently. The other to run consecutively.

D. N. OGOTI

CHIEF MAGISTRATE

3. 4.2019

