



**Republic v Lagat (Anti-Corruption Case 24 of 2017) [2018] KEMC 90 (KLR)  
(Anti-Corruption and Economic Crimes) (10 September 2018) (Judgment)**

*Republic v Sammy Kipchirchir Lagat [2018] eKLR*

Neutral citation: [2018] KEMC 90 (KLR)

**REPUBLIC OF KENYA  
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION CASE 24 OF 2017**

**DN OGOTI, CM  
SEPTEMBER 10, 2018**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMMY KIPCHIRCHIR LAGAT ..... ACCUSED**

**JUDGMENT**

1. The accused faced 3 counts all brought under section 6(1) (a) as read with section 18(1) and (2) of the *Bribery Act* No. 47 of 2016. The charges in Count 1 and II only differ in dates where as count III related to receiving. The 1<sup>st</sup> counts were allegedly committed on 7<sup>th</sup> whereas counts II and III concern the 8<sup>th</sup> November 2017.
2. The facts allege that on 7<sup>th</sup> and 8<sup>th</sup> of November 2017 at Kiambu Traffic Offices, within Kiambu County, being a person employed by a public body with National Police Service as a police constable attached to Kiambu traffic base, requested for received a financial advantage of Kshs. 2000/= from George Macharia with intent to forbear charging the said George Macharia with unspecified traffic offences and to release his motor vehicle Reg. No. KAV 307V Mitsubishi Pickup which he detained a matter related to the affairs of the said public body. The accused denied the charges. The Republic called 7 witnesses.
3. PW1 was George Macharia. He described himself as a farmer from Kiambu. That on the 7<sup>th</sup> day of November 2017 about 200 metres from his home, he was flagged down by a police officer. He was asked for a driving licence which he did not have as he had not carried it. His request to go a collect it fell on deaf ears. The officer, he came later to learn was PC Mbijiwe grabbed his car keys from the



ignition ordered him out and drove off. He went home got the licence and went to the scene and met the officer who told him he was not interested and sent him to the police station.

4. At the station he met a different police officer who told he had been charged with three offences. He was told that in order to get back his vehicle he had to pay Ksh.2000/=. This was by PC Langat. He found the same to be harassment and reported to the EACC. At the EACC he was given and inducted on gadgets to use to record the officer. He was further given Kshs.2000/= whose S/Nos were marked in denominations of Kshs. 1000/=. He was then escorted to Kiambu Police Station. This was on the following day. He started the conversation about the request for Kshs. 2000/= on the previous day. That they agreed on Ksh 1000 (1000/=). He then requested the officer that he gets it from mpesa. He went to the EACC officers got the money and delivered it to accused. In exchange he got his car keys. Got in the vehicle and drove off as the officers arrested the accused. He identifies the genuine notes as Pexb 3, photocopy of the same as Pexb4 its inventory as Pexb-6 and inventory of car keys as Pexb-7. He also identified transcripts as Pexb 9(a) and 9(b). During his testimony the video clip was played. There was a conversation and request to give Kshs. 1000/= and a voice says “ungekuja ukiwa tayari meaning you should have come when you are ready”. There was a face of an officer shown but was not clear. In cross examination he informed the court that he was arrested by P.C Mbijjiwe. That accused showed him a paper with charges to be preferred against him. The accused then asked him whether he had brought the money for the bond. And then a voice says “Kuja kotini kesho” meaning “come to court tomorrow” that there was nowhere in the transcript the accused asked for money and neither was the exchange of Kshs. 1000/= captured in the video and nobody witnessed the giving. That the money was recovered from a cabinet which had other money. He could not remember what the locker was made of and that he did not frame the accused.
5. Pw2 was No 232268 VCIP Leah Gitau. She was called to the EACC to watch a video clip. She also identified the accused identified the accused. According to her accused was arrested in the process of going to write a cash bail. That the video clip she was shown was not clear and could not describe the voices. And that the complainant disappeared at the time of arrest and his evidence was driven to the police station and could neither be given cash bail nor a free bond.
6. Pw3 was Martin Mbuvi, an investigator with the EACC. Together with PW4, PW5 and PW7 assisted in investigations of this case upon a request by PW7. They prepared treated money and with-it escorted complainant to the Kiambu Police Station. He produced the photocopy of the money as Pexb-4, inventory of the money Pexb- 8 Ksh. 1000/= note Pexb 3 and the ½ Khaki envelope as Pexb-5. In cross examination on the transcript, this witness said the transcript said “ujajaza” meaning “you have not filled up” but did not talk about the Kshs. 1000/-PW4’s statement was akin to that of PW3 except that they arrested accused as he walked to his residence, had his hands swabbed by PW4. Took him back to his office where Kshs. 1000/= was recovered. In cross examination he explained that ujajaza in Pexb 9(b) meant the complainant had not taken the agreed the Kshs. 2000/=. Further that receipts for cash were kept in the office of the OCS which was in front of the station whereas the office of the base commander was behind the station. The officer left towards the residential area and there was no other money in the drawer. That further at page 1 of Pexb-9(b) line 3 from the bottom the accused had asked complainant whether he had taken the money for bond. PW4 whose evidence was akin to the rest in cross examination informed the court that he could not remember whether it was an audio or video they had analysed to come to a finding that there was a demand for Khs. 1000/= and that he also did not see any other money in the drawer. PW5 reiterated the evidence of the other witnesses. Pw6 the Government analyst received several items i.e A. Khaki envelopes containing left- and right-hand swabs. Kshs 1000/= S/NO DX8277630 by 8277630. Another Khaki envelope containing the control sample. After analysis she found that APQ powders was on all items.



7. PW7 was the investigating officer. He basically repeated what PW1, PW3, PW4 and PW5 said. He prepared the inventory of the recovered money Pexb-6 and of keys Pexb-7. They escorted accused to integrity centre after arrest and prepared Pexb 9(a) and 9 (b) and Pexb 10(the DVD). In cross examination he informed the court that he did not get a witness to identify the voice of accused and neither did he sign a certificate that the gadgets were in good working order. That in his statement the accused had told him that he had to the office of the OCS to get receipts which explanation he did not agree with. That PW1'S vehicle had been detained by PC. Mbijiwe as PW1 escaped. Accused in his defense on oath informed the court that the complainant went to the station after time of registration of offences was complete and was asked to deposit a cash bail of Kshs. 5000/=. He said he was to go and get the money. He said he was asked to return the following day 9:00a.m but did not return at that time but returned at noon. He then requested for bond to be reduced to Kshs. 1000/=. That the accused did not take the money left with him. The complaint was allowed after a request to start his car which was diesel propelled. The accused then placed the money in the locker with other money and as he went for the cash bail receipts he was arrested just outside the office. That he never requested for a bribe and explanations to the EACC that the money was for a cash bail fell on deaf ears. In cross examination he informed the court that they insisted on cash bail because most accused never used to turn up in court. I have also considered the submissions by learned counsel from both sides in their final submissions. It is from the above evidence that this court is required to make a finding on whether or not the republic proved their case against the accused person beyond all reasonable doubt.
8. It is not in dispute that accused was a police officer who received money in the course of his duties on 8<sup>th</sup> November 2017 at the Kiambu Police Station. What is in dispute is as to whether the money was a bribe. PW1 in his evidence was clear that he was arrested 200metres away from his home by PC Mbijiwe (not called as a witness); Keys confiscated from him and his vehicle driven to the police station where he met accused who asked for a bribe. Pw2 in her evidence informed the court that pw1 ran away upon his arrest leaving his car behind. At the station Pw1 informed the court that he found accused who showed him a paper which had 3 counts that were to be preferred against him. According to him the Kshs. 2000/= asked for by accused was for a bribe. I had occasion to revisit pexb 9(a) and 9(b). in the video clips played in court there was a request to give Kshs. 1000/= and a voice says “ungekuja ukiwa tayari meaning you should have come when ready”. Another voice says ‘kuja kotini kesho” meaning come to court tomorrow. Pw1 informed the court that money was recovered from a cabinet which had other money. According to PW2 accused was arrested in the process of going to get a cash bail receipt. Pw3 informed the court that the word ujajaza appearing in the transcripts meaning “you have not filled” did not talk about Kshs1000/=. As I revisited the transcripts there was nowhere there was a specific demand for money.
9. In the transcripts accused asked whether the complainant has returned with a cash bail in order to take him to court. He was very consistent in his defence from the onset of the prosecution's case that the money he received was for a cash bail and he was arrested before he could prepare cash receipt as he went for it. Further the court also observed that at the station it is Pw1 who provoked the talk on the bribe, as accused was heard asking for a cash bail. It is also not accused how detained Pw1's vehicle. Also, that evidence on record that accused ran away after being stopped by Pc Mbijiwe was not controverted. There was also the issue of money in the drawer. Pw1 told the court there were other monies in the drawer where as other witness said it was only the 1000/=. And if indeed accused received the money as a bribe and was heading home, the question the prosecution did not answer is why he left it behind with other monies. He had also not detained the motor vehicle as indicated in the charge sheet but the vehicle had been detained by PC Mbijiwe. The intent to take a bribe was not established. The defence created immense doubts on the prosecution's case and I am unable to find whether the prosecutions



established its case against accused beyond all reasonable doubt. Accused offered a plausible defence. He is acquitted under section 215 of the Criminal Procedure Code.

**DATED THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2018.**

**HON. D.N. OGOTI(MR.)**

**CHIEF MAGISTRATE**

10. 9.2018

**10/9/2018**

Before Hon. D. N. Ogoti (Mr.) CM

Pros: Miss Kivali

Court clerk: Isaac

Accused: Present

**D. Omar** holding brief for Nyamweya for accused.

**Kivali** present for state

**Court:** Judgment delivered in open court on this 10<sup>th</sup> day of September 2018.

**HON. D.N. OGOTI**

**CM**

**10/9 2018**

**Mr. Omar:** Accused is out of the cash bail. The court orders release of the cash bail.

Accused whose fingerprints were taken and was interdicted. We urge the court to reinstate him.

**Court:** Is that for this court

**Mr. Omar:** I will advise my client and seek for typed proceedings at our cost.

**Court:** The cash bail deposited to be refunded to the depositor. Typed proceedings to be prepared and served on both parties at their own cost.

**HON. D.N OGOTI**

**CM**

**10/9/2018**

