



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndegwa v Republic (Criminal Appeal E105 of 2025)  
[2025] KEHC 17314 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E105 OF 2025  
DR KAVEDZA, J  
NOVEMBER 25, 2025**

**BETWEEN**

**STEPHEN KARORI NDEGWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
2nd July 2025 by Hon. M. Maroro (SPM) at Kibera Chief Magistrate's  
Court, Criminal Case No. 403 of 2024 Republic vs Stephen Ndegwa Karori)*

**JUDGMENT**

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of Stealing by servant contrary to section 281 of the Penal Code. The particulars were that on the diverse dates between 24<sup>th</sup> October and 15<sup>th</sup> December 2023 at Uthiru area, Dagoretti Sub-County, within Nairobi County, being a servant to Teddy Thuku stole twenty-five (25) Samsung phones worth Kshs 484,000/= the property of the said Teddy Thuku, which came into his possession by virtue of employment. He was sentenced to two (2) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court, but bearing in mind that it never saw the witnesses testify.



4. PW1, Teddy Thuku, testified that he trades in mobile phones under the name Watu Simu Credit. The appellant worked with him on a commission basis. On 24<sup>th</sup> October 2023, the appellant took phones for sale and accounted for them without issue. In November 2023, he failed to remit proceeds for the phones he had collected. When confronted, the appellant admitted the loss and undertook to pay. After persistent follow-up, he returned seven out of twenty-five phones. Although he initially claimed that only twenty-one were outstanding, subsequent reconciliation confirmed that twenty-five phones were unaccounted for.
5. In cross-examination, PW1 stated that the appellant was a sales agent paid weekly commission. He was present during most handovers and signed the relevant documents. His attempts to reach the appellant in January 2024 to settle the missing phones were unsuccessful. An audit confirmed a deficit of twenty-five phones. PW1 and the stock manager reconciled the records, and the appellant signed the reconciliation. On re-examination, PW1 stated that the appellant routinely participated in reconciliations with the stock manager.
6. PW2, the stock manager, testified that on 24<sup>th</sup> October 2023 he released ten phones to the appellant upon PW1's instructions. On 29<sup>th</sup> October 2023, he released twelve more. On 5<sup>th</sup> November 2023, the appellant collected further stock, and PW2 recorded the sales from the previous batch. PW1 later instructed him to record all returns made by the appellant. In total, the appellant returned seven phones.
7. In cross-examination, PW2 confirmed that he handled dispatch and recorded the IMEI numbers. On 15 December 2023, the appellant attended reconciliation, and PW2 prepared the report. The documents showed that twenty-five phones remained unaccounted for. In re-examination, he explained that earlier discrepancies arose because the appellant had taken phones from other dealers.
8. PW3, Police Constable Gabriel Kibe, corroborated the evidence of PW1 and PW2.
9. When placed on his defence, the appellant stated he was introduced to PW1 through a friend and obtained a dealership with Watu Limited. He asserted that he received stock from various suppliers, including Ted Tech and Samir Communication. He claimed he collected fifteen phones on 28 October 2023, seven on 3<sup>rd</sup> November 2023, and nine on 5<sup>th</sup> November 2023, in addition to stock from other dealers.
10. He stated that in November 2023 he replaced three missing phones, and in December 2023 he replaced two more. Toward the end of December, his stock limit was increased. A later audit revealed twenty-eight missing phones, prompting a meeting where he agreed to begin replacement. On 9<sup>th</sup> January 2024, he returned seven phones. The outstanding balance stood at sixteen phones valued at Kshs 314,500, which he undertook to settle but failed to do by 20<sup>th</sup> January 2024. He later informed PW1 that he had CRB issues and sought more time.
11. In cross-examination, he conceded that he was selling under PW1's dealership and acknowledged that he had no documentation to prove that he purchased additional stock from Samir or Alhamir Communication.
12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
13. The offence of Stealing by Servant is created under Section 281 of the Penal Code, which provides that if an offender is a clerk or servant, and the thing stolen belongs to the employer or came into the offender's possession on account of the employer, they are liable to imprisonment for seven years.



14. To sustain a conviction under this section, the prosecution must prove three essential elements. First, that the accused was employed by the complainant. Second, that the property came into the accused's possession by virtue of that employment. Third, that the accused dishonestly took or converted the property, thereby defrauding the employer. Stealing is defined in Section 268 of the Penal Code as taking property capable of being stolen without a claim of right or fraudulently converting it to the use of another.
15. On the first element, the complainant (PW1) testified that the appellant was engaged as a sales agent at Tedtech Mobiphones Communication. This evidence was supported by PW2, the stock manager, who dealt directly with the appellant during stock dispatch and reconciliation. The prosecution also produced an employment verification letter confirming the appellant's engagement. The appellant did not dispute being an employee of PW1. This element was, therefore, satisfied.
16. On the second element, the evidence shows that the appellant collected several batches of phones from PW1's shop and from PW2 in his capacity as stock manager. PW1 testified that only seven of the twenty-five phones issued to the appellant were returned. PW2's reconciliation reports, signed by the appellant, confirmed the variance. PW3, the investigating officer, corroborated the missing stock. The appellant admitted receiving phones from PW1 and PW2, though he attempted to introduce alternative explanations involving other suppliers. His account, however, was unsupported by documentation and contradicted his signed reconciliations. The property was, therefore, clearly in his possession by virtue of his employment.
17. On the third element, the prosecution evidence demonstrated a dishonest dealing with the employer's property. Despite persistent follow-up, the appellant failed to account for the missing phones. His shifting explanations, unsupported claims of additional suppliers, and inconsistent narrative on the number of missing items undermined his credibility. In contrast, the complainant's evidence was coherent, consistent, and supported by contemporaneous stock records. The appellant's partial return of seven phones further confirmed that he had possession and control of the stock and was aware of his obligation to deliver the proceeds or return the items.
18. The defence offered was largely an admission of receiving the phones and failing to return or replace them in full. His claims of CRB issues and negotiations with PW1 may explain delay but do not negate the fraudulent conversion of employer property. The defence did not create any reasonable doubt and was inconsistent with the documentary trail produced by PW2.
19. In the result, the Court is satisfied that all elements of the offence of Stealing by Servant were proved beyond reasonable doubt. The conviction was proper and is upheld.
20. On sentence, the appellant was sentenced to 2 years' imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.
21. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Mr. Wahome for the Appellant



Appellant Present

Mr. Mutuma for the Respondent

Ms. Karimi Court Assistant.

