



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Republic (Criminal Appeal E073 of 2025)
[2025] KEHC 17924 (KLR) (2 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 17924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E073 OF 2025
DR KAVEDZA, J
DECEMBER 2, 2025**

BETWEEN

DENNIS NDEGWA MAINA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Z. Abdul (P.M) on 15th May 2025 at Kibera Chief Magistrate's Court
Criminal Case no. 805 of 2023 Republic vs Dennis Ndegwa Maina & another)*

JUDGMENT

1. The appellant was charged with two counts of offences. In count one he was convicted for the offence of stealing by servant convicted for the offence of stealing by servant contrary to section 268 (1) as read with section 281 of the Penal Code, Cap 63 Laws of Kenya. He was sentenced to pay a fine of Kshs. 50,000 in default to serve 12 months imprisonment. In count two, he was jointly charged and acquitted for the offence of conspiracy to commit a felony contrary to section 393 of the Penal Code. Being dissatisfied, he filed an appeal challenging his conviction and sentence.
2. In his appeal he 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.
3. As this is the appellant's first appeal, the role of this appellate court of first instance is well settled. It was held in the case of Okeno vs Republic [1972] EA 32 and further in the Court of Appeal case of Mark Oruri Mose vs Republic [2013] eKLR that this court is duty-bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyse it and come to its independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanour of the witnesses and hearing them give evidence and give allowance for that.



4. The prosecution called seven witnesses. PW1, Abdulwahab Abdulrahman Galgalo, the Head of Security, testified that on 27th July 2020 he was informed by the former Chief Accountant, Charles Nyongesa, and an ICT Assistant, Bernard, that suspected fraudulent transactions had been detected within the Sage Evolution system. He stated that certain invoices had been manipulated, with some amounts reduced and others deleted.
5. Management resolved to outsource an ICT audit, and PW4, Boniface Mbugua, was engaged. Upon completion, PW4 compiled a report confirming system manipulation. PW1 further stated that the system auditor informed them that the deletions had been effected by a person with super user rights, identified as the Appellant, Dennis Ndegwa Maina, who was the Head of ICT.
6. On 3rd August 2020, PW1 reported the matter at Capitol Hill Police Station, after which police officers visited the Upper Hill offices and escorted the Appellant for questioning. PW1 also accompanied officers to Startec Limited in Westlands for further investigations. The Director recorded a statement on 4th August 2020, and during inquiries, Accused 2, Victor Nyambane, a driver based at the Nairobi Depot, was arrested as the person who delivered milk in relation to the altered invoices.
7. PW1 further testified that internal investigations revealed that the Local Purchase Orders (LPOs) supporting the invoices were not genuine. On 7th August 2020, together with the police, they visited Game Discount Garden City Branch, where the management disowned the LPOs. Similar visits were made to Game Discount Waterfront Karen and Chester House, and all the LPOs were equally disowned.
8. PW2, Miriam Bosibori Mariga, an Invoicing Clerk, testified that her duties included generating invoices based on orders sent via email by the sales team and approved by the Chief Accountant. Orders for Nyansiongo would be forwarded to the loading team, while those for Nairobi were sent to the Accountant. In 2020, during reconciliation, she noted discrepancies between the manual register and the online system, where some amounts had been altered and others deleted.
9. PW3, Zipporah Wangari, the Human Resource Manager, confirmed that the Appellant was the ICT Manager, while Accused 2 was employed as a driver.
10. PW4, Boniface Mbugua, an IT Consultant, testified that he was engaged on 24th July 2020 to conduct a system audit of the complainant's financial and network environment. He found that the IT Administrator had issued system access rights to an external party, Startech Business Solutions. He stated that passwords had been changed, staff email accounts blocked, access rights restructured, and invoices altered or deleted. He prepared a report on the affected customers and produced it in evidence. He further testified that the Appellant was the System Administrator and held super user rights, enabling him to alter invoices at the sequel server level.
11. PW5, Charles Nyongesa, an accountant testified that his duties included preparation of financial statements and monthly reconciliation of company records. Towards the end of July 2020, during routine reconciliation, he discovered that several sales invoices had been altered and others deleted within the Sage system. He initially informed the Appellant, Dennis Ndegwa Maina, who was the System Administrator and ICT Manager, but received no response despite sending an email. He thereafter informed Eddah Moraa, who was in charge of Nairobi sales, and requested original or scanned invoices. Copies were sent to him the following day, none bearing customer acknowledgements. He identified and produced thirteen affected invoices and relevant customer statements as exhibits.



12. Upon checking the system, PW5 noted that some altered invoices had been reverted to correct figures, while deleted invoices could not be recovered. He reported the matter to management and the security team and later recorded a statement. He testified that investigations revealed collusion between Eddah Moraa and Accused 2, Victor Nyambane, the driver, in manipulating the system and diverting goods. He further stated that the Appellant held super user rights to the sequel server and was the only person capable of effecting such alterations.
13. In cross-examination, PW5 outlined the invoicing and dispatch process, confirming that Accused 2 delivered goods and returned signed invoices for reconciliation. He stated that by July 2020, he had observed systematic deletion of invoices. He left the company before final system audit reports were prepared. In re-examination, he maintained that, to his knowledge, the Appellant held administrator rights to the system.
14. PW6, Peter Mbatha, a DCI Forensics Examiner, testified that on 18th August 2020 and 12th October 2020, the forensic laboratory received exhibits escorted by PW7, PC Mildred Musibeke, accompanied by exhibit memo forms. The exhibits comprised hard disks and flash disks. He retrieved the deleted invoices, printed them, compiled a report, and produced it as an exhibit.
15. PW7, PC Mildred Musibeke, the Investigating Officer, confirmed that the matter was reported at Capitol Hill Police Station. She reiterated the evidence tendered and outlined the investigative steps taken, including submission of devices recovered from the Appellant for cybercrime analysis. She produced several exhibits and confirmed that both accused persons were arrested and charged.
16. At the close of the prosecution case, the accused persons were placed on their defence. The Appellant, Dennis Ndegwa Maina, gave sworn testimony and confirmed that he was employed by Highlands Creameries as an IT Administrator and later promoted to Head of IT from July 2017 to August 2020. He described the process of order placement, approval, and delivery, stating that the Finance team followed up on payments. He denied involvement in handling of milk or customer collections and stated that he did not interact with Accused 2 on sales matters. On cross-examination, he stated that another system had been set up by a third party and that he had reported inconsistencies to that party, though he could not recall when or provide proof.
17. Accused 2, Victor Nyambane, also gave sworn testimony and stated that he was employed as a driver, and his duties were limited to delivering milk and returning invoices to the company.
18. I have considered the record of the lower court and the submissions filed by the parties. The issue for determination is whether the appellant's conviction was proper.
19. For the prosecution to prove the charge of stealing by servant, it must establish the following: that the Appellant was an employee of the complainant, that the Appellant stole the property of the employer that came to his possession in the course of the employment, and finally that the appellant dishonestly appropriated the said property thereby depriving the employer of the same.
20. First, the Appellant's employment is not in dispute. He admitted that he was employed by the complainant as the IT Administrator and later promoted to Head of ICT. PW3 confirmed this position. He was therefore a servant within the meaning of the law.
21. In this case, the property in question comprised the complainant's goods and the corresponding invoice values reflected in the financial system. This ownership was proved through the evidence of PW1, PW2, PW4 and PW5 on the invoicing, dispatch and reconciliation process.
22. From the record, the evidence against the appellant was largely circumstantial. The Court of Appeal in *Sawe v Republic* [2003] KLR 364 restated that for a conviction to be founded on circumstantial



evidence, the circumstances must form a complete chain pointing unerringly to the accused's guilt, and must exclude any reasonable hypothesis of innocence. Similarly, in *Musili Tulo v Republic* [2014] eKLR, the Court held that such evidence must irresistibly lead to the inference that the accused, and no one else, committed the offence.

23. Thirdly, although the Appellant did not physically handle the goods, the evidence shows that the invoices controlling the movement and accounting of those goods fell within his exclusive technical control. PW4 testified that the Appellant was the System Administrator with super user rights to the sequel server and that only a person with such rights could alter or delete invoices at that level. PW5 equally confirmed that the Appellant alone had administrator access capable of effecting such changes.
24. On whether there was fraudulent conversion, multiple witnesses established that invoices were systematically altered and deleted from the Sage system. Customers subsequently disowned the LPOs tied to those invoices. PW6 recovered deleted invoices through forensic analysis. PW5 testified that some altered invoices were later reverted to correct figures, pointing to deliberate interference rather than system error. The Appellant was directly notified of the discrepancies by PW5 but failed to respond. No evidence was tendered that any other person held similar super user access at the material time. His defence that a third-party system existed remained unsubstantiated.
25. The circumstantial evidence is consistent and cogent. Considered together, the evidence establishes exclusive technical capability, unexplained system manipulation, and a clear trail of falsified records affecting the employer's property. The chain of circumstances points irresistibly to the Appellant's participation in the fraudulent conversion. Collectively, this evidence establishes the appellant's culpability in the theft.
26. Having critically analysed the evidence on record, this court was satisfied that the learned Trial Magistrate did not err in convicting the appellant for the offence of stealing by servant contrary to section 268(1) as read with section 281 of the penal code. The conviction is upheld.
27. On sentence, the appellant was sentenced to pay a fine of Kshs. 50,000 in default to serve 12 months imprisonment.
28. Section 281 of the Penal Code Cap 63 (Laws of Kenya) provides that:

“If the Offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.”
29. During the sentencing, the trial court considered that the appellant was a first offender and his mitigation and exercised discretion. The sentence imposed was also legal and I see no reason to interfere.
30. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 2ND DAY OF DECEMBER 2025

D, KAVEDZA

JUDGE

In the presence of:

Appellant Absent

Mutuma for the Respondent



