

REPUBLIC OF KENYA REP
IN THE HIGH COURT OF KENYA AT KAPENGURIA.
CRIMINAL APPEAL NO. E002 OF 2025

PETER LOLIBO APPELLANT

- V E R S U S -

REPUBLIC STATE

JUDGMENT

The appellant **Peter Epem Lolibo** was charged with the following offences,

Count I ; -Receiving a bribe contrary to section 6(1) (a) as read with section 18(1) and (2) of the Bribery Act No. 47 of 2016.

The particulars of the charge were that on 10/9/2019 at Lodwar Club, Lodwar Town, being a person employed by a public body to wit Office of Director of Public Prosecutions as a clerk, requested for a financial advantage of Kshs.200,000/= from Boniface Lokaale Korobe, in consequence that you could avert his arrest and prosecution in Criminal case no. 298/2019 before Lodwar Law Courts.

Count II – Receiving a bribe contrary to section 6 (1) (a) as read with section 18 (1) and (2) of the Bribery Act No. 47 of 2016.

Particulars of the charge are that on 23/9/2019 being a person employed by a public body, to wit Office of Director of Public Prosecutions as a clerk,

requested for a financial advantage of Kshs.50,000/= from Boniface Lokaale Korobe, in consequence that you could avert his arrest and prosecution in Criminal case no. 298 of 2019 before Lodwar Law Courts

The appellant denied the offence and the case proceeded to full trial with the Prosecution calling ten (10) witnesses. Upon close of the Prosecution case, the appellant was called upon to defend himself and he gave a sworn statement and called one witness. The appellant was convicted on both counts and sentenced to pay fine of Kshs.50,000/= on each count in default to serve one year imprisonment on each count.

The Appellant is aggrieved by the said conviction and sentence and preferred this appeal. Through the firm of Katina Advocates, he filed this appeal citing nine Grounds of Appeal. They are as follows;-

- (1) That the charges were not proved beyond reasonable doubt (Grounds 1 and 3);**
- (2) That the evidence did not support the charges;**
- (3) That the trial court erred in finding that the negotiations between the appellant and complainant were captured on audio and visual recordings (Grounds 4 & 7);**
- (4) That the fact that the appellant worked with the DPP and drafted the letter dated 22/8/2019 is insufficient to prove criminal culpability;**

(5) That the sentence was harsh;

(6) That the Charge was duplex and hence defective;

(7) That the court shifted the burden of proof onto the Appellant

(8) That both counts are based on assumptions.

The appellant therefore prays that the conviction be quashed and sentence set aside.

This being a first appeal, it behoves this court to exhaustively examine all the evidence that was tendered before the trial court, evaluate and analyse it and arrive at its own conclusions. However, this court has to bear in mind that it neither saw nor heard the witnesses testifying. This court is guided by the decision in **Okeno -VS- Republic (1972) EA 32.**

The Prosecution case:-

PW1 Boniface Lokale, a resident of Lodwar, testified that in December 2018, he purchased a Range Rover motor vehicle from Silas Mureithi. In the same month, his in-law Daniel Lokirema asked him to go and witness a car transaction between him and Silas Mureithi but he found somebody else had already signed the agreement. In March 2019, Daniel called to inform him that he never received the truck he had purchased. PW1 helped track down the seller who was arrested in March 2019. On 23/8/2019, he received a WhatsApp message from one Benson Lokwang of DPP office Lodwar that he had got a letter from an Inspector of Police; that the letter recommended that him and

Simon Maroo be charged as accomplices of Mureithi who had been charged with the offence of obtaining by

false pretenses in Lodwar Court. On 29/8/2019, Inspector Oloo, the Investigator in the Mureithi case called him but he was away and called him back on 1/9/2019; PW1, Lokiriama and his cousin Maroo met I.P. Oloo at the club and on arguing why he wanted to charge them, he claimed to have instructions to do so but he suggested that it could be sorted out.

On 10/9/2019 they had a meeting with IP Oloo and Peter Lolibo, the appellant at the club; that the appellant confirmed that the letter PW1 received was from Office of the Director of Public Prosecutions (ODPP) and they started discussions on how to resolve the issue; that I. P. Oloo suggested that they give them Kshs.200,000/= but they negotiated the amount to Kshs.50,000/=. He recorded the said meeting on his phone and reported to Ethics and Anti-corruption Commission (EACC) on 19/9/2019. He met EACC Officers on 23/9/2019 and they gave him a gadget which he carried to the next meeting with the appellant and I.P. Oloo on 24/9/2019. The EACC Officer Samiji gave him Kshs. 50,000/= which was in Kshs.1,000/= denominations and they recorded the serial numbers. He went to the club, called the appellant who went there and he asked appellant to go with him to the car to receive the money. They went to the car but appellant declined to enter the car because he feared it was a trap. It is then the EACC Officers arrived and arrested appellant.

PW2 Stephen Yego a Forensic Document Examiner received exhibit memo form from Investigating Officer, Samiji with a letter from ODPP to DCIO Lodwar dated 22/8/2019 with specimen signatures of one Tito Oloo Wanga. He was asked to ascertain whether the signature on the document marked 'A' and the specimens were authored by the same person. On examination, he found that the signatures were made by the same person (P.Exh. No.5). He found the signature to be that of Tito Oloo Wanga.

PW3 Vincent Ayan an employee of EACC, on 26/9/2019 was approached by his colleague Charles Samiji who gave him a DVD containing a conversation of Boniface Korobe, David Oloo and Peter Epiem which was partly in Turkana language and he was requested to transcribe and translate them. He did so and produced the transcripts as P.exh.b (1) original script and P.Exh.4(2) as the translated script. In cross examination, PW3 could not tell who demanded money at page 4 paragraph 19. Whether it was David Oloo or not.

PW4 Fundi Frank Lumbasi an Investigator with EACC stated that on 23/9/2019 he joined a team of investigators at Pension Hotel Lodwar to interview a complainant, one Benson Korobe (PW1). He had complained that an Officer from DPP's Office Lodwar had demanded Kshs.200,000/= to forego charging him with an offence of obtaining through false presences, The complainant was trained on use of Audio visual device (recorder) and in the afternoon, they met to analyze the device where they established that a bribe of

Kshs.50,000/= was demanded to be delivered next day 24/9/2019. On that day PW4 applied a Chemical APQ on Kshs.50,000/= which was photocopied. An inventory was prepared which included the serial and they were numbers. The treated money was put in an envelope and given to the complainant to give to the suspects; that the complainant proceeded where he was to meet the suspects while PW4 sat on another table in the club and two other officers laid ambush outside. The complainant was supposed to signal them once he handed over the money. He saw the suspect and Boniface leave the club and on following them outside, found he had been arrested by Ali Guyo Samuel who had been left outside. They arrested him and went to look for Oloo but did not find him.

PW5 Charles Mureithi a Superintendent of Police with DCI Turkana North, recalled that in August 2019, one Benson Lokwang told him that the DCIO wanted to charge his friend Bruno. He found that there was a letter from ODPP directing that Bruno be charged along with another who already had a pending case before court. He saw the letter from ODPP and requested Mr. Wanga of ODPP to confirm if the letter was genuine.

PW6 Ali Guyo of EACC then based in Eldoret stated that Boniface Korobe (PW 1) reported that a police officer attached to DCIO Lodwar and an officer at ODPP Lodwar had demanded Kshs.200,000/= bribe so that he could not arrest and charge (PW1) for the offence of obtaining money by false pretences. He was among the four (4) officers mandated to investigate the matter including

Charles Samiji (PW 10). He was with Samiji when they met and briefed the complainant on 23/9/2019. He saw the letter from ODPP directing that the complainant and one Simon be arrested and charged.

He was with Samiji when the clip recorded by the complainant was viewed when he saw accused and another engaging in a conversation about Kshs.50,000/=; that the suspect and complainant were to meet at the club the next day 24/9/2019 and him and Samiji remained outside in the car and when they saw the appellant walk out of the club, they arrested him. The complainant confirmed that he had not given the money to the appellant. The recorded clip was later played to the appellant and Tito Wanga of DPP.

PW6 recorded the Appellant statement and next day, recorded IP Oloo's Statement and arrested them and both were charged after the appellant was identified as an employee of ODPP.

PW7 Tito Wanga, a Senior Prosecution Counsel then based at Lodwar recalled that there was a matter criminal 298/2019 in which accused was Cyrus Marete, charged with obtaining by false pretences. He was arraigned in court on 17/6/2019. He prosecuted the case where the complainant stated that he was introduced to Cyrus Marete by his friend Boniface Korobe and Simon Maroo, as a person who sells vehicles. The complainant agreed to buy a lorry and deposited Kshs.2.5 million and the documents were between Boniface and complainant; that it is Simon and Boniface who signed the sale agreement. He

found that Boniface was not a witness in the case and after perusing the file, he instructed the Investigating Officer to arrest Boniface Korobe and Simon to be enjoined with Cyrus Marete. He wrote a letter dated 22/8/2019 that the matter was coming up for hearing on 19/8/2019 instead of 19/9/2019, the Investigating Officer on noticing the typing mistake, wrote another letter dated 28/8/2019 and the letter with the mistake was left on his desk. On 24/9/2019 three EACC officers visited his office and informed him that the appellant had been arrested and they showed him a letter he had authored on a screenshot which he identified but it had the wrong dates i.e 19/8/2019 and bore his signature. He informed his boss George Mongare about it.

PW8 Geroge Mongare. Senior Assistant Director of Prosecution then In-charge in Turkana County, recalled 24/9/2019 when Samiji informed him that he had arrested Peter Lolibo, a non-Legal Staff for soliciting for a bribe in Criminal case No. 298/2019. He was shown the letter dated 22/8/2019 addressed to Ochieng; that the ODPP decided to charge Peter Lolibo but not his co-accused. He was shown a video clip in which he identified the appellant from his appearance and the voice.

PW9 Benson Lokwang a resident of Lodwar received a letter which related to his friend Boniface Korobe and forwarded to him. He was later called by EACC to record a statement.

PW10 Charles Siriano Samiji was the lead investigator in the case where Boniface Korobe reported that a DCIO Officer and ODPP Officers had demanded a bribe of Kshs.200,000/= so that he could not be charged.

PW10 recalled all the steps they took on the case together with Richard Kulimo, Frank Fundi and Ali Guyo. He confirmed to having given Boniface (PW1) a device to record their conversation with the suspects which he did on 23/9/2019; that on 24/9/2019, the complainant was given Kshs.50,000/= which was treated in Chemical, for him to give the suspects at the club. PW10 and Mr. Guyo remained in the car outside as two other officers went inside the club. When they saw the appellant come out, they intercepted him and arrested him. They established that he had not taken the money. He downloaded the recording into a DVD which he handed to one Vincent Ayan to translate and transcribe. He viewed the transcript and at page 4 paragraph 11, saw the amount of Kshs.50,000/=. He forwarded the matter to DPP who preferred the charges. He did not know why David Oloo was not charged.

Defence Case;

When called upon to defend himself, the appellant admitted to being an employee of the ODPP but denied demanding any money as a bribe from the complainant. He recalled that on 23/9/2019 he was outside Lodwar Law Courts with the office vehicle heading to town when he gave a lift to David Oloo to go to Lodwar club where he was meeting somebody. He stayed away from Oloo

who later called the appellant to join Korobe and I P Oloo at the table. He heard them talking about Kshs.200,000/= but did not understand what it was all about; that when he refused to accept the money he walked out and was followed by the complainant who went to get money from his car and tried to give him but he refused. When he refused to take, the complainant asked him to ask Oloo to take it but he left him seated in his vehicle and a few metres away he was arrested. He admitted having typed the letter dated 22/8/2019 on behalf of Tito Wanga.

The appellant called Inspector David Oloo, of DCI Lodwar as a witness. He recalled that the complainant Boniface Korobe was a suspect in a case of obtaining by false pretence in Lodwar; that on 23/9/2019 the complainant requested to meet him at the club, which he did using a lift from the appellant and that the appellant did not know whom he was going to meet.

He was aware of the letter from the ODPP dated 22/8/2019 which had a mistake; that he did not intend to arrest Boniface Korobe on that day because investigations were incomplete; that he informed Boniface of the need to record a statement on the allegation that him and Cyrus Mureithi obtained money by false pretences that he would deliver a motor vehicle; that the appellant who had gone to the bathroom joined him after about thirty (30) minutes; that he left the appellant with Boniface and had no idea what they talked about. DW2

stated that he went to meet the complainant at the club because he had summoned him to their offices but he had failed to attend.

APPELLANTS SUBMISSIONS.

On ground 1 and 3, it was the appellants submission that there was no proof that a demand of Kshs. 200,000/= was made as there was no transcription of the events that took place on 10/9/2019; that the conviction on that charge was based on circumstantial evidence and the court failed to consider the appellant's defence.

On Count 2 and 8, it was submitted that the appellant never took the entrapment money and that although the court found that the appellant negotiated the bribe from Kshs.200,000/= to 50,000/= there is no evidence supporting that finding because the complainant stated that it is the complainant who suggested the issue of bribery but not the appellant who made the demand or initiated any request for a bribe.

In ground 4 and 7 on audio and visual recordings, it was urged that they were of poor quality inconsistent and inaudible; that the conversation was not well captured leaving questions of the authenticity and veracity; that even the prosecution witnesses accepted that the quality of the audio and visual recordings were unclear yet the Magistrate relied on it; that from the translation, it could not be determined who demanded the money; that more doubts were

raised on the transcriptions; that therefore the evidence was not sufficient to found a conviction.

On ground 5 and 6, it was submitted that it was a fact that the appellant worked at the ODPP doing Clerical job and his role in drafting the letter of 22/8/2019 was not sufficient to establish criminal culpability for bribery; that there was no nexus between the facts and the allegations of demand of a bribe.

In the supplementary submissions, it is urged that the charge was duplex hence defective. Reliance was made on Section 135(1) of the Criminal Procedure Code; that in court the appellant is alleged to have received Kshs.200,000/= and in count 2, he received 50,000/= and that the two are therefore duplex which was prejudicial to the appellant as the finding of guilt on both counts was double punishment for the appellant. Reliance was made on the decision of **Mohammed Ali Shaban -Vs- Republic (2021) KEHC.**

The trial court was blamed for shifting the burden of proof on the appellant when the court held inter alia that the defendant had not offered an explanation as to why the complainant could go to great length to have him arrested and charged.

Lastly, it is the appellants submission that the charges are based on assumption; that the court did not interrogate whether the appellant asked for the bribe or

whether it was the complainant who made the offer; that from the transcript, there was no mention of fifty thousand shillings.

Respondent's Submissions

Counsel Submitted that the elements of the crime under section 6(1) (e) of the Bribery Act is proved where a person either requests , agrees to receive or receives a financial or other advantage; that in this case the appellant was captured negotiating a financial advantage of the 200,000/= which was later reduced to Kshs.50,000/= though he did not receive it.

On entrapment, Counsel relied on the case of **Ogada -V- Republic C. Appeal No. E003/2022 (2022)** where a defence of entrapment was defined. He also relied on **Jacobson -Vs- USA,503 US 540**, which set out the elements of offence of entrapment; that from the elements, the appellant was not entrapped because the appellant initiated the negotiation; those transcriptions were evidence of the transactions. As regards the sentence, it was submitted that the same was a slap on the wrist because section 18 of the Bribery Act provides a fine of five million shillings or a term not exceeding ten (10) years or to both.

Determination:-

I have now considered the grounds of appeal, the evidence on record and the rival submissions.

The Appellant faced two counts under section 6(1) (a) as read with section 18 (1) & (2) of the Bribery Act. Section 6 (1) (a) which creates the offence charged and provides as follows: -

Section 6 Receiving a Bribe:-

(a) the person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person;

(b) the recipient of the bribe requests for, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance by the recipient of a bribe of a relevant function or activity.

(c) in anticipation of or as a consequence of a person requesting for, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by that person, or by another person at the recipients' request, assent or acquiescence.

The elements of the said section were discussed in **CRA. E010/2023 Kinoti -V- Republic (2014) HEHC** Anti-corruption and Economic Crimes (8fly 2024) where the court set out the essential elements of the offence of receiving a bribe to be,

- (i) Requests, agrees to receive or receives a financial or other advantage;**
- (ii)The intention is that a relevant function or activity should be performed improperly by the person or another person and**
- (iii)The function or activity must be of a public nature or of such a nature carried out by a public officer.**

This being a criminal charge, the burden always rests on the prosecution to prove its case beyond any reasonable doubt. The question will be whether the appellant asked for or received Kshs.200,000/= on 10/9/2019 and Kshs.50,000/= on 24/9/2019. The appellant has alleged that the court erred in shifting the burden of proof on him. I have read the Judgment of the trial court and I do agree that the burden of proof was shifted to the appellant when the court stated at page 93 (Record of Appeal) line 10-14. **“The court is not convinced that these two people were friends and that they just ended up at the hotel for a cup of tea. There is no reasons provided by the defence to convince the court as to why the complainant would go to such great length to have him arrested, in the manner which they did if it was not true”.**

The appellant had no duty to provide reasons for the complainant's behaviour. All that is required of an accused is to answer to a charge by giving a reasonable or plausible explanation or he may even opt to remain silent. In this case, the court erred in expecting the appellant to prove his defence. The above notwithstanding, this being a first appeal, this court will reconsider, analyze and evaluate all the evidence tendered before the trial court and arrive at its own independent findings.

The next issue I need to deal with is whether the appellant received Kshs.200,000/= on 10/9/2019. PW1 told the court that he met the appellant and Oloo on 10/9/2019 whereby they started discussing how the appellant could be absolved from the looming charges of obtaining by false pretences. PW1 said that he recorded the said meeting on his mobile phone. However, the same was never produced in evidence. There is therefore no evidence to support the allegation that a demand was made. Besides, it was clear from PW1's testimony that it is Oloo who made the demand. PW 1 did not tell the court exactly what role the appellant played at that stage and the specific roles played by each, the appellant and I.P. Oloo. Without recording, this court cannot be certain whether the appellant made such demand / request from Korobe.

Curiously, I P Oloo was never charged for these offences yet it seems he was the one at the forefront demanding the bribe. PW1 testified to I P Oloo making the first demand of Kshs. 200,000/= and it my considered view that IP Oloo

should have been charged too. No clear explanation was given as to why he was exempted from the charges.

There is no doubt that the appellant met the complainant on 23/9/2019. On that day I P Oloo, the complainant and the appellant were present. This is supported by the video transcript of the two dates. Although the appellant and DW2 only alluded to meeting once on 23/9/2019, that is not the case. PW8 Mongare who worked with the appellant at the time saw the video clips and confirmed that the appellant appeared in them and he was able to identify his voice and appearance; I do not believe the appellants narrative of the events that they met once when the appellant had given a lift to I P Oloo. The narration of what happened by the appellant sharply contradicts what I P Oloo told the court. Whereas the appellant claimed that it is I P Oloo who talked of Kshs.200,000/= with the complainant and they tried to force him to take money which he declined. DW2 however said that he left the appellant talking to the complainant and did not know what they talked about. The defence was not believable.

There is no dispute that the complainant was threatened with being charged with an offence and it is the appellant who typed the letter dated 22/8/2019 on behalf of PW7 in which the intention to charge the complainant was mooted. It is a fact that the appellant only worked as a clerk with ODPP and was therefore not in a position to influence a decision to charge or not charge the complainant.

However, the appellant did not meet the complainant alone but was in company of the Investigating Officer in the said matter who is I P Oloo in a club away from their work places. As observed by the trial court, that it is questionable why these two, the appellant and I P Oloo would be meeting the complainant, a person who was facing possible criminal charges, in a hotel, not once but twice in succession to discuss the case.

Coming to the transcriptions, it is the appellants contention that they are not very clear and audible. I note from the scripts that there were a few incomplete sentences and dashes. However, from the translation of 23/9/2019 at page 118 line 21 to 25 of the Record of Appeal, the complainant was seeking clarification on how much to pay, whether Kshs.200,000/= . It is evident that the conversation was an ongoing negotiation and at page 119 line 12-15, the appellant agreed to payment **“leta tu hamsini”** just bring fifty.

On 24/9/2019, towards the end of the conversation, it is apparent that the appellant developed cold feet when he expressed himself at page 122 line 20 **“Tunaogopa sisi kabisa as much as tunakula pesa, lakini pesa ya magendo hii naogopanga”** line 27 **“sawa wacha tuu tuogope, mhhh naogopa sana”**

What is captured in the transcripts corroborates PW1’s testimony that money was demanded, the appellant developed cold feet and did not take the money. Not only did they discuss money issues but also alluded to the case that was before the court and who the prosecutor was. Taking all the evidence in its

totality, I am satisfied the appellant was truthful that the appellant did request for money from the complainant.

The appellant did not actually take the money which the investigators had treated. The issue of entrapment did not therefore arise.

Under Section 6 of the Bribery Act, to prove an offence under the section, it is sufficient if one makes a request. In the instant case, the request was to influence the appellant to use his office as a clerk at the ODPP's office to help the complainant avert an impending arrest and a charge for the offence of obtaining by false pretences. This was an improper activity. The appellant was a clerk working in a public office I find that all the elements of the offence were proved.

In his defence, the appellant claimed that the complainant tried to give him money for what he did not know and he refused to take it and soon thereafter he was

apprehended. The appellants defence and I. P. Oloo's evidence is not convincing at all. As noted earlier, I. P. Oloo was part and parcel of this. They are dismissed as untrue.

Whether the charges were duplex. Section 135 (1) Criminal Procedure Code provides as follows: -

“(1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

In the case of **Amos -Vs- DPP (1988) RTR 198 DC**, the court considered the effect of a charge that is duplex when it said that the rule is meant to deal with **“uncertainty in the mind of the accused is the vice at which the rule against duplicity is aimed and to counter a true risk that there may be confusion in the presenting and meeting of charges which are mixed up and uncertain.”**

Again in the case of **Ministry of Agriculture & Fisheries and Food -VS – Munn (1978) Limited (1990) CR.La 265 DC**, the court explained that the question of duplicity is one of fact and degree; and that the purpose of the duplex rule is to enable the accused to know the case he has to meet.

Having looked at the two charges, it is obvious that the acts referred in the first count were part of the acts referred to in the second count. The demand was initially for 200,000/= and was negotiated downwards to Kshs.50,000/=. I am therefore of the view that the chain of events did not justify the appellant being charged with two counts. The separation of the period rested in duplicity and the charging of the appellant with two counts resulted in prejudice whereby he was convicted and sentenced twice for the same offence. That error is however

not fatal but would have been curable by virtue of section 382 of Criminal Procedure Code.

In the end, I find that the prosecution did not prove the first charge that the appellant received Kshs.200,000/= in terms of count I. The conviction is hereby quashed and sentence set aside. The fine that was paid in respect of count I be refunded to the person who paid it.

As regards Count II, I find that the prosecution proved the said charge beyond any reasonable doubt and the conviction is therefore sound and I affirm it.

On the question of sentence in respect of count II, Section 18(1) of the Anti - Bribery Act provides for a sentence of ten (10) years imprisonment or to a fine of Kshs. five (5) million or to both. In my view, a fine of Kshs.50,000/= in default one (1) year imprisonment was slap on the wrist. The court will not interfere.

The appeal partially succeeds. It is so ordered.

**Judgment delivered, dated and signed in open court at
Kapenguria this 4th day of March, 2026.**

R. WENDOH
JUDGE

In the Presence of:-

Appellant - in person

Ms. Koech for Respondent - Prosecution Counsel

Juma/ Hellen Court Assistants