



REPUBLIC OF KENYA



**KENYA LAW**  
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**Guantai v Republic (Criminal Appeal E020 of 2025)  
[2026] KEHC 2455 (KLR) (23 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2455 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E020 OF 2025  
HM NYAGA, J  
FEBRUARY 23, 2026**

**BETWEEN**

**PETER GUANTAI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the judgment of Hon. J.M. Njoroge, C.M delivered on 3rd October 2024 and sentence ruling delivered on 17th October 2024 in Meru CM's Court Criminal Case No. 865 of 2018)*

**JUDGMENT**

**Background**

1. The Appellant, PETER GUANTAI, was charged before the Chief Magistrate's Court at Meru in Criminal Case No. 865 of 2018 with the offence of stealing by servant, contrary to Section 281 of the Penal Code. The particulars of the offence were that on diverse dates between 23rd December 2017 and 21st March 2018, being an employee of Meru Dairy Cooperative Union at Meru Township in Imenti North Sub-County within Meru County, he stole Kshs. 4,199,914/= belonging to the said Cooperative Union, which came into his possession by virtue of his employment as a Marketing Officer.
2. The Appellant pleaded not guilty to the charge. After a full trial in which the prosecution called six(6)witnesses and the Appellant tendered his defence, the Appellant was convicted as charged and sentenced to serve four (4) years imprisonment.
3. Being aggrieved and dissatisfied with the said conviction and sentence, the Appellant filed the instant appeal.



## The appeal

4. The Petition of Appeal raised the following summarized grounds:
  - a. That the prosecution failed to prove its case beyond reasonable doubt, particularly regarding the exact amount alleged to have been stolen.
  - b. That the learned trial magistrate erred in law and fact by relying on extraneous evidence not properly on record, including delivery notes and cheques.
  - c. That the trial court failed to consider the Appellant's defence and the evidence of his witnesses, thereby arriving at a perverse decision.
  - d. That the learned trial magistrate relied on wrong provisions of the law, thus arriving at an erroneous conclusion.
  - e. That the entire judgment was against the weight of the evidence on record.
5. Directions were given that the appeal was to be argued through written submissions. At the time of writing this judgment, only the appellant's submissions were on record.

## Appellant's submissions

6. The appellant's submissions were rather verbose, repetitive and more often than not, wandered into irrelevant issues, which I understand as he is not a trained lawyer.
7. Having gone through them, I have sifted the arguments and summarised them as hereinafter.
8. The applicant submitted that the case was heard without an audit report, and that the prosecution struggled to provide clear and credible evidence of the financial loss. That lack of concrete proof made the prosecution's case weak and insufficient to prove guilt beyond a reasonable doubt as encapsulated under the law.
9. The appellant further submitted that the statement of account produced by the Prosecution supported & confirmed the appellants defence, that no payments were made using cash, hence customer paid directly to the company's mobile payment platforms.
10. The appellant further submitted that the discrepancies as to the exact amount found to be missing relate to the core issues of the case, creating a real doubt about the prosecution's version of events. That it was established that some customers paid money to the company which were overlooked by the company. That the discrepancies are too significant to hold a safe conviction leading to failure of the prosecution's case. He relied on the decision in *Richard Munene Vs Republic (2018) eKLR*.
11. The appellant also submitted that the tenets of a fair trial pursuant to Article 50 (2) (b),(k),(j) of *the Constitution* were contravened as he was not afforded an opportunity to recall witnesses for further examination nor was he notified of that right upon the amendment of the charge sheet pursuant to section 214 of the CPC, because the amount was crucial to secure a safe conviction.
12. The appellant further submitted that the trial court treated the defendant's testimony as less credible and weighty than it should be. That the failure to properly evaluate the defense evidence is an erroneous breach of law. The appellant cited *Okech Okale vs. Republic (1964) EACA 179* to buttress this argument.



## Analysis and determination

13. This is a first appeal. As such, this court has a duty to re-evaluate and re-consider the evidence adduced before the trial court, assess it, and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify. This principle is well settled in *Okeno v Republic* [1972] EA 32.
14. I have carefully considered the record of appeal, which includes the evidence adduced before the trial court, the grounds raised in the appeal, and the submissions of the appellant. I will not rehash the evidence that was tendered but will where necessary, refer to the same.
15. The first issue that I need to address was whether the appellant was accorded a fair trial, as he alleges, on the ground that he was not allowed to recall witnesses after the charge sheet was amended.
16. I have perused the original trial court record. The charge sheet was amended on 25<sup>th</sup> October 2022, after the last prosecution witness (PW6) had testified. The amendment was in respect of the amount in question, increasing it from Ksh. 3,684,034/= to Ksh. 4,199,914/=. The other particulars remained the same.
17. Section 214 of the Criminal Procedure Code deals with an amendment of the charge. It provides as follows;
  214. Variance between charge and evidence, and amendment of charge
    - (1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:  
Provided that—
      - (i) where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;
      - (ii) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination.
    - (2) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for the variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.
    - (3) Where an alteration of a charge is made under subsection (1) and there is a variance between the charge and the evidence as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.
18. It is evident that amendment was done due to the variance in the amount as tabulated, before the close of the prosecution case. The appellant did not seek to recall any witness.



19. Unlike section 200 (3) of the Criminal Procedure Code that obligates the court to inform the accused of the right to recall witnesses, the above section only gives the accused the right. Ideally, the court ought to inform the accused of the right to recall any witness after an amendment of the charges and if the court is to find that the accused was prejudiced by the amendment and the failure to be informed of the said right then this court may intervene.
20. Section 382 of the Criminal Procedure Code provides as follows;

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.
21. In this case the amendment was only in the figures arising from the documents that were in court. I do not see any prejudice occasioned upon the appellant by the said amendment as he had already cross-examined the witnesses. Even if the amendment was to be disallowed, the previous charges would still remain. I am thus of the view that, all in all, the Appellant was accorded a fair trial in accordance with Article 50 of *the Constitution*. He was given an opportunity to challenge the evidence against him, which he did through extensive cross-examination, and the opportunity to present his defence.
22. The Appellant's other grievance is that the prosecution did not prove its case beyond a reasonable doubt. Specifically, he challenges the proof of the exact amount alleged to have been stolen, being Kshs.4,199,914/=. The discrepancy and uncertainty, in the amount stolen was, in his view, a reason to find that the conviction was unsafe.
23. The legal burden of proof in criminal cases rests squarely on the prosecution. Section 107 of the *Evidence Act* provides that he who alleges must prove.
24. The prosecution case was that the appellant was employed as a marketing officer. The appellant's role was to source for clients. Upon receipt of orders from the said customers, he would receive the products for delivery to them. He was also tasked with ensuring that the customers paid for the goods. Upon audit and reconciliation, a deficit was discovered in respect to his account. The prosecution witnesses produced various documents, including bank statements, delivery notes, and invoices in respect to the appellant's account to demonstrate how the sum of Kshs. 4,199,914/= was arrived at.
25. While the Appellant contests the accuracy of this figure, the trial court duly noted that the appellant was called and given a chance to reconcile his account, but he failed to appear. In fact he stepped out during the reconciliation and then absconded duty. The appellant was the one who knew where he had supplied the products that he had received and he was under a duty to disclose that information to his employer. The company were able to prove the quantity of products that the appellant received. The company even took account of some money paid to it in the course of the investigations, including two (2) cheques that the appellant presented.
26. In my view, what was relevant was the amount that the appellant was found not to have accounted for at the time he was asked to appear for the reconciliation. It is possible that some clients may have paid for some deliveries later, but this was information that only the appellant could give. Being asked to



- account did not amount to shifting the burden of proof to him. Upon failing to account, by either providing the goods or their equivalent value in cash, or evidence of delivery to any client, the company was entitled to take action against him. The varying amounts as time went on was expected if payments were made to the company. I find that ground of appeal to have no basis.
27. The Appellant also asserted that the trial magistrate relied on extraneous evidence, such as delivery notes and cheques, which were not properly admitted. This is a serious allegation, as it touches on the fairness of the trial.
  28. A trial court must base its decision solely on the evidence that has been formally admitted during the proceedings. To rely on extraneous material would be a violation of the rules of natural justice and the accused person's right to a fair trial under Article 50 of *the Constitution*.
  29. Upon a careful perusal of the lower court record, I note that various documents were produced as exhibits during the trial. The prosecution witnesses identified these documents, and the defence was afforded an opportunity to cross-examine the witnesses on them. The trial court, in its judgment, made reference to these documents as part of its analysis of the evidence.
  30. In the absence of any specific demonstration by the Appellant as to which documents were "extraneous" and not properly tendered, this court cannot fault the trial magistrate. It is clear that the trial court confined itself to the evidence on record. This ground of appeal also lacks merit.
  31. The Appellant also contends that his defence and that of his witnesses was disregarded. The record shows that the Appellant gave a sworn statement in his defence and called witnesses. He denied the offence and attempted to explain the discrepancies in the accounts.
  32. The duty of a trial court is to consider the defence offered, however implausible it may seem, before arriving at a conviction. The learned trial magistrate, in the impugned judgment, did actually consider the Appellant's defence. However, he found that the same did not create a reasonable doubt in the prosecution's case. The trial court was entitled to reject the defence if it found it to be a mere denial or an afterthought in the face of overwhelming evidence presented by the prosecution.
  33. I find that the trial court properly directed its mind to the defence and gave reasons for rejecting it. This ground is similarly found to be unmeritorious.
  34. The Appellant further argued that the trial magistrate relied on the wrong provisions of the law.
  35. The charge in question was laid under Section 281 of the Penal Code, which provides for the offence of theft by a clerk or servant in the course of his or her employment.
  36. The prosecution's evidence was led with the aim of proving the ingredients of the offence, namely that the appellant was employed by the company and that the goods or their cash equivalent came to his possession in the course of such employment. It did not matter what the actual description of the appellant's job title was. What was relevant was that in the course of his employment, he received the goods and failed to fully account for them. I find that the trial court's findings were correctly anchored on the said legal provision. There is no indication that the trial magistrate applied any other law. This ground is unfounded.
  37. The Appellant also submitted that the judgment was against the weight of evidence. Having re-evaluated the evidence, it is clear that the Appellant was a marketing officer entrusted with delivery of his employer's products to the clients that he sourced. He was responsible for the payments made by the clients he had delivered the products to. Since his employer did not know these clients, the appellant was the one who ought to have ensured that the payment was done. A significant shortfall of over Ksh. 4 million was discovered. The trial court having given him an opportunity to present his



defence, found that the Appellant could not account for the goods or had stolen the money. The trial court's findings were consistent with the evidence adduced.

38. I am satisfied that the conviction was not against the weight of the evidence but was, in fact, the only reasonable conclusion to be drawn from it.
39. Consequently, I uphold the conviction of the appellant.
40. On the sentence, the appellant was sentenced to four (4) years imprisonment. The maximum sentence for the offence is seven (7) years. The complainant is a company owned by farmers, so the loss attributed to the appellant had a direct effect on their earnings. I don't think that the sentence was excessive, and I will not disturb it.
41. In conclusion, I find that the appeal lacks merit and it is hereby dismissed.

**DATED, SIGNED, AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF FEBRUARY 2026.**

**H.M. NYAGA**

**JUDGE**

