

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
HIGH COURT CRIMINAL APPEAL NO. E047 OF 2022

JOSPHAT MUINDE KILEE
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

JUDGEMENT

1. The appellant was charged with six counts of corruption and related offences.

Count 1: Corruptly Soliciting a benefit contrary to **section 39 (3) (a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003.**

The particulars of the Charge were that on the 17th day of March 2016 at Ithanga location within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly solicited a benefit of Ksh. 20,000.00 from Paul Musyimi Kavuthi as an inducement to fast-track processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

Count II: Corruptly Soliciting a benefit contrary to section 39 (3) (a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003

The particulars of the Charge were that on or about Mid October 2016 while at Ithanga shopping centre within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly solicited a benefit of Ksh. 10,000.00 from Paul Musyimi Kavuthi as an inducement to

fast track processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

Count III: Corruptly Soliciting a benefit contrary to section 39 (3) (a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003

The particulars of the Charge were that on 24th October 2016 at Paul Musyimi's residence, Ithanga within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly solicited a benefit of Ksh. 10,000.00 from Paul Musyimi Kavuthi as an inducement to fast track processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

Count IV: Corruptly Soliciting a benefit contrary to section 39 (3) (a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003

The particulars of the Charge were that on the 17th of March 2016 while at Ithanga location within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly solicited a benefit of Ksh. 40,000.00 from Paul Musyimi Kavuthi as an inducement to fast track processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

Count V: Corruptly Soliciting a benefit contrary to section 39 (3)(a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003

The particulars of the Charge were that on the 26th day of October 2016 while at Ithanga location within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly solicited a benefit of Ksh. 10,000.00 from Paul Musyimi Kavuthi as an inducement to fast-track

processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

Count VI: Corruptly Receiving a benefit contrary to section 39 (3) (a) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003

The particulars of the Charge were that 26th day of October 2016 while at Ithanga shopping centre within Murang'a County, being an employee of a public body to wit, Ministry of Interior Coordination of National Government as a Chief, corruptly received a benefit of Kshs. 7,000.00 from Paul Musyimi Kavuthi as an inducement to fast-track processing of his late mother's death certificate, a matter relating to the affairs of the said public body.

2. The appellant denied the charges and a plea of not guilty was entered the matter proceeded to trial where the appellant was acquitted under Counts 1 to IV but convicted under Counts V and VII. The prosecution relied on 11 witnesses to advance the case against the appellant.
3. PW1, Paul Musyimi Kavuli, testified that in February 2016 he decided to sell his late mother's land to raise money to bury his brother Kioko Kiinga. He met a buyer by the name Matheri, with whom they agreed towards a purchase price of Ksh. 580,000.00 for one acre. They drafted an agreement in the appellant's office in the presence of Peter Mwenda, a neighbour and his wife Regina Kiubi. Thereafter, the appellant asked him for Kshs. 20,000.00 to go and report PW1's mother's death to facilitate the processing of the title deed for the purchaser. He gave the appellant the Ksh.20,000.00 as requested. Later, on 20.10.2016 he went back to the appellant's office to follow up on the status of the death certificate, the appellant told him that the Ksh. 20,000.00 wasn't enough and therefore he needed to pay a further Ksh. 10,000.00. he then decided to report the

demand for money at the Antic Corruption offices in Nairobi. The EACC officers promised to follow up on the matter. The officers visited on a day he couldn't recall and gave him Ksh. 10,000.00 which he was to take to the appellant as the money he had requested. He put the money in his pocket and took it to the appellant. He was with Peter Mwendo when the appellant received this money.

4. He inquired whether the appellant would reduce the demand to Ksh. 7,000.00 and the appellant agreed and refunded the Ksh. 3,000.00. shortly thereafter, officers from the EACC entered and asked the appellant to surrender the money he had received from PW1. He was also asked to surrender the money that the appellant had refunded him. The appellant was subsequently arrested and escorted away. Peter Mwendo was fitted with a recorder and when they went to the appellant's office the said Peter Mwendo put it on the appellant's table. The said recorder looked like a mobile phone. He clarified that his mother died in 1993. He stated that he had sought the assistance of the chief to have the land transferred to his name so that he could transfer it to the buyer. One of his brother's had already obtained the mother's death certificate. Since the brother had been away for 27 years, he sought help from the chief to get another death certificate to enable them process the letters of administration as the brother with the death certificate had been gone for so long that they had imagined him dead.
5. PW2, Zilpa Awuor, testified that she is a police officer seconded to the EACC tasked with setting sting & trap operations. She states that on 26th October 2016 a colleague requested her to assist in treating Kshs. 10,000 to be used for a trap operation. She photocopied the money, dusted it with a chemical and made an inventory of the treated money and then handed it over to Wachira, his colleague. Out of the treated Kshs. 10,000.00 she got Kshs. 3,000.00.

6. PW3, No. 55971 Cpl James Wachira a police officer seconded to the EACC. He stated that his colleague Amos Nyamukaso requested to be accompanied to Murang'a for a sting operation. They met PW1's friend who was instructed on how to operate the recording gadget. Thereafter, PW3 gave PW1 Kshs. 10,000.00. Shortly thereafter, he received a signal from his colleague that the appellant had already received the money given by PW1. He proceeded to the appellant's office, identified himself and asked the appellant to refund the money that had been given to him by PW1 and the appellant complied. His colleague Abdul recovered the money Ksh. 7,000.00 and PW3 made an inventory of the money. The appellant was arrested and escorted to the integrity centre. The appellant signed the inventory marked as MF1-6 and not the one marked as MF1-7. Abdi Osman recovered the money in PW3's presence and PW3 wrote the inventory.
7. PW4, Abdi Osman Roble, an investigator with EACC testified that he enlisted PW3 to assist him in a sting operation in Murang'a. they proceeded to Ithanga parish where they met PW1 and his friend on 26th October 2016. They followed PW1 and his friend proceeding to the appellant's office. Shortly thereafter, Peter Mwendo signalled them and they rushed to the appellant's office, introduced themselves and arrested the appellant. PW3 prepared the inventory. He swabbed both hands of the appellant and put the swabs in different brown khaki envelopes. He also recovered the brown long trouser. The chief was escorted to the integrity centre. The appellant declined to sign inventory Pexh 7.
8. PW5, Peter Muendo Mutuku, testified that he witnessed the sale of land by PW1 to one Matheu. The appellant counted the money paid by the purchaser and retained Kshs. 20,000.00 that he would use the same for procession succession documents for a Title Deed to be issued within 3 weeks. PW1 lamented that he felt like the appellant had

misused his money as there was no feed-back on the Title Deed. The appellant was demanding a further Kshs. 10,000.00 to facilitate the Title Deed. He then escorted PW1 to the Integrity house to lodge a report against the appellant. Officers from EACCC gave him a recorder and taught him how to operate it. They then proceeded to the appellant's office on 26th October 2026, the appellant agreed to take Kshs. 7,000.00 and the remaining Kshs. 3000,00 would be given once the Succession papers are out. He stepped out and handed over the recorder to PW4. He later learnt from PW1 that the appellant had been arrested. PW1 had already obtained the death certificate of his deceased mother by the time he reported delay in the succession cause at the DCI.

9. PW6, Regina Katunge, a wife to PW1 testified that the appellant maintained that he would assist PW1 file the succession cause, hence his reason for retaining the Kshs. 20,000.00 from the proceeds of the sale of land by PW1. Even when the purchaser had offered to facilitate the succession by himself.
10. PW7, John Njoroge Kariuki, testified that he is the village elder Kakuku sub location and has known the appellant since 2012. He is Chief. He identified the voice of the appellant in the recorder given to him by PW4. He signed a certificate of voice recognition. He is Kikuyu but the voices he heard were in Kikamba.
11. PW8, Martin Mbuvi, an investigator at the EAC testified that on 28th October 2016 he was at the Integrity House office when he was asked to listen to a recording and determine whether there was a bribe demand. He established there was a bribe demand of Kshs. 10,000.00 which was bargained to Kshs. 7,000.00. He then transcribed the recording and translated them to English language. He prepared and signed a certificate of translation.

12. PW9, Joseph Matheri Kamau, testified that he had entered into an agreement with PW1 for sale of land. He paid a deposit of Kshs. 360,000 and took possession of the land. Kshs. 20,000 of the money paid to PW1 was given to the appellant to foresee filing of Succession and grant of letters of administration. He met PW1 who complained that the appellant was delaying the matter and urged PW1 to reconcile with the appellant without friction as the appellant was saying that if PW1 wanted a refund of his deposit then he should pay the cost of travelling from Thika to Murang'a. The appellant promised to complete the Succession within six months
13. PW10, Catherine Sera Mwambi, a government analyst testifies that she received an exhibit Memo from PW11 with items to wit a right-hand swab of the appellant, a left-hand swab of the appellant, pair of brown trousers labelled as recovered from the appellant, Kshs. 7,000 in denominations of Kshs. 1000.00 and a half-cut envelope. She analyzed the items and the result was positive for the money, the back pocket and the right-hand side pocket.
14. PW11 Amos Yonkasoy, an investigator with the EACC. He testifies that on 25th October 2016, he was introduced to PW1 who had lodged a complaint of a bribe demand from the appellant. He recorded statements of PW1 and PW5 and requested a colleague to treat Ksh. 10,000.00 for a sting operation. PW5 was coached on how to use a recorder and on 26th October 2016 they proceeded to Ithanga parish where the treated money was handed over to PW1 and he proceeded to the appellant's office and handed it over. PW5 alerted him that the operation was completed. They moved in and introduced themselves to the appellant. He witnessed PW4 conduct a swab on both hands of the appellant, recovered Kshs. 7,000.00 from a brown-trouser that the suspect was wearing. He took the recording gadget from PW5 and the appellant was escorted to the integrity centre. The appellant was asked to organize for a different

trouser. He prepared an exhibit Memo and took the items to the government chemist for analysis. Consent to chare the appellant was obtained from the DPP. The bribe was solicited for fast tracking the death certificate.

15. The court found that the appellant had a case to answer and proceeded to place him on his defence. The appellant gave sworn evidence in defence stating that he is the chief Ithanga Location. He maintained that the money received from PW1 was to be handed over to an advocate to facilitate the succession process. The advocate had asked from Kshs. 40,000. He had initially paid Kshs. 20,000 and a receipt issued to him for the same. A balance of Kshs. 20,000 therefore remained and the money paid by PW1 was part payment of the advocate's fees. He was merely a conveyor to the advocate. He admitted that working as an agent of the advocate is not his role.
16. The court noted that the inducement crystallized when the appellant told Peter that he wanted this man (PW1) to have that something so that it can be given to the lawyer and accused received Kshs. 7,000.00 and counted out as depicted in page 16 to 20 of the transcript. Upon receiving the amount, the appellant assured them that he would make sure he gets that thing as he had been added oil and he now had energy. The court opined that the energy and oil he was referring to was the Kshs. 7,000.00 which he had received. It was not the duty of the appellant to collect fees on behalf of advocates. The appellant was in full control of the money demanded thus he was gracious enough to reduce the demand to Kshs. 7000.00. the mere fact that the evidence did not specifically address what the appellant was to do was not fatal to the prosecution's case.
17. The trial court convicted the appellant on Counts V & VI under Section 39 of ACECA as the Bribery Act is not retrospective. He was subsequently fined Kshs. 150,000.00

in both counts in default to serve six months imprisonment. The sentences were to run consecutively.

18. Aggrieved and dissatisfied with the findings of the court, the appellant lodged a Petition of Appeal dated 15th September 2022 urging the following grounds:
 - i. The trial magistrate erred in law and in fact by his reliance on extraneous evidence not specifically adduced at trial.
 - ii. The learned trial magistrate erred in law and in fact by convicting the appellant on a charge and particulars that were contradictory and inconsistent with the evidence adduced at trial.
 - iii. The trial magistrate erred in law and fact by failure to consider the defence raised and in particular that instructions were given for filing in court of a succession cause thus the appellant did not commit the offence as alleged and contained in the charge sheet.
 - iv. The trial magistrate erred in law and fact by convicting the appellant on a charge and evidence that was contradictory, inconsistent and marred with doubts which could only be resolved in favour of the appellant.
 - v. The trial magistrate erred in law and fact by convicting the appellant against a repealed law.
19. The court directed that the appeal be canvassed through written submissions.
20. The appellant submitted that the appellant was caught in the cross fire between the complainant and his family. The appellant did not solicit the bribe as alleged by the Respondent, he was simply conveying money from the complainant to an advocate who had the professional

capacity to file and prosecute the succession cause. Therefore the money in question was not a bribe. In any case, the complainant had already obtained the death certificate for the deceased and there was therefore no reason for obtaining another death certificate that required fast tracking by the appellant. PW1 merely blamed the appellant to avoid being accused of intermeddling with the estate of the deceased.

21. The Respondent submitted that the evidence tendered proved the offence to the required standard. The appellant was an agent of the ministry of interior and coordination of national government serving as a chief. The evidence of PW1 and PW5 coupled with the transcript produced clearly proved that on 26th October 2016, PW1 and PW5 visited the appellant's offices, they negotiated for fast tracking of a thing to be used in the succession proceedings- being a death certificate. The appellant solicited for Kshs. 10,000.00 and the parties negotiated it down to Kshs. 7,000.00, which was treated money set up as a trap by the Ethics and Anti- Corruption Commission. Therefore, the prosecution proved both counts V and VI to the required standard.
22. On the issue of whether the evidence was marred with inconsistencies, the Respondent submitted that there were no major inconsistencies in the evidence as the counts that relied on different amounts being Counts 1 to IV were not proved to the required standard and therefore, the court acquitted the appellant. On the other hand, no inconsistency was demonstrated in Count V and VI as it was established that the money solicited was for purposes of fast tracking the processing of a death certificate. In any case, if there were any inconsistency, the same would not be fatal to the prosecution case as it was held in **Ndolo Musyoki versus Republic [2022] Eklr** that minor discrepancies that do not discredit the prosecution case are merely trifling.

23. Similarly, the trial court duly considered the appellant's defence resulting in his acquittal under Counts I to IV and his conviction under Counts V and VI. Therefore, the Respondent submitted that the appeal be dismissed and the finding of the trial court be upheld.

24. As the first appellate court, its duty is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make its independent conclusions, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses firsthand. **(See *Okeno v Republic* [1972] EA 32.)**

25. The Appellant was convicted on Counts 5 and 6, which are the charges of corruptly soliciting and receiving a benefit **contrary to Section 39(3) (a) (repealed) of the Anti-Corruption and Economic Crimes Act (repealed).**

26. **Section 39 of the Anti-Corruption and Economic Crimes Act** though repealed was saved by Section 27(2) of the Bribery Act. in so far as it applied to pending bribery cases. Section 27(2) of the Bribery Act states:-

"27(2). Any investigation or prosecution or court proceedings instituted before the commencement of this Act based on an offence under this Act shall, with the necessary modifications, be treated or continued as if they were instituted under this Act."

27. In the case **Paul Mwangi Gathongo v. Republic [2015] eKLR** Mativo, J delineated the ingredients of the offence of soliciting and receiving as follows:

"The main ingredients of the offence (soliciting and receiving a bribe) are that the accused must be acting in any capacity, whether in public or private sector or employed by or acts on behalf of another person, that he must be

shown to have obtained or attempted to obtain from any person gratification other than legal remuneration, that gratification should be as a motive or reward for doing or forbearing to do, in the exercise of his official function, favor or disfavor to any person. The gravamen of the offence is acceptance of or the obtaining or even the attempt to obtain illegal gratification as a motive or reward will complete the offence. In order to constitute an offence three things are essential; in the first place, there must have been solicitation or offer or receipt of a gratification. Such gratification must have been asked for, offered or paid as a motive or reward for inducing by corrupt or illegal means, and secondly that someone should be acting in the public or private or employed or acts for and on behalf of another person, or confer a favor or ask for a favor to render some service.”

28. The then **Section 39(3) of the Anti-Corruption and Economic Crimes Act** under which the Appellant was charged and which was saved by **Section 27(2) of the Bribery Act** reproduced above stated:

“39.Bribery involving agents.....

(3)A person is guilty of an offence if the person —(a)corruptly receives or solicits, or corruptly agrees to receive or solicit, a benefit to which this section applies; or(b)corruptly gives or offers, or corruptly agrees to give or offer, a benefit to which this section applies.”

29. When placed on his defence, the Appellant admitted receiving the funds but explained that the Kshs. 7000 was to be transmitted to an advocate who had conduct of a

succession cause on behalf of the Complainant. However, this defense was not credible enough to rebut the prosecution case that the payment was a bribe as the appellant himself admitted that conveying money to advocates is not part of his job description. Also, the transcript of the conversation among the appellant, PW1 and PW5 demonstrates that the appellant reserved control of the amount of money that was allegedly required by the advocate. This level of control is not ordinarily retained by persons acting as agents or principals of an advocate. Furthermore, the fact that the appellant said that he was well oiled and full of energy to work out that thing was the language of soliciting and receiving a bribe. The trial court considered the appellant's defence but the same did not counter the strong case that the prosecution had levelled against him.

30. Based on the above, I am convinced that there was evidence beyond reasonable doubt that the Appellant corruptly received the bribe so as to facilitate an action that related to the alleged Succession cause that PW1 was interested in. In my consideration, PW1 and PW5 were truthful and reliable as the Appellant himself admitted receiving the funds in question, the only point of departure is that the appellant maintains that the amount was meant for the advocate while PW1 maintains that the same was bribery.
31. Counsel for the Appellant raised an issue concerning the variance between the purpose of the bribe, to procure a death certificate, versus the need to facilitate succession proceedings as admitted by PW1. It is my finding however that that contradiction is curable under **Section 214(2) and 382 of the Criminal Procedure Code** as no prejudice is alleged to have been occasioned to the Appellant. The evidence on record demonstrates that the appellant solicited and received a bribe from PW1 to

facilitate the performance of a thing relating to the Succession cause.

32. While it is evident that appellant has no material role in succession proceedings other than the writing of the Chief's letter to facilitate Succession proceedings. It is instructive that the argument cannot hold in view of the provisions of **Section 50 of the Anti-corruption and Economic Crimes Act** which states: -

"50. Impossibility, no intention, etc., not a defence In a prosecution of an offence under this Part that involves a benefit that is an inducement or reward for doing an act or making an omission, it shall not be a defence—

(a)that the act or omission was not within a person's power or that the person did not intend to do the act or make the omission; or

(b)that the act or omission did not occur."

33. The upshot is that the two charges of soliciting a bribe to wit Count V and receiving a bribe Count VI were proved beyond reasonable doubt and the trial court was not in error and the conviction is safe and is upheld.
34. On the sentences in Counts V and VI, the trial court sentenced the Appellant to a fine of Kshs.150,000 in each count in default 6 months imprisonment on each count and an order that the sentences were to run consecutively. These sentences are within the statutory limits of **Section 48** of the **Anti-Corruption and Economic Crimes Act** and are not excessive or illegal as to warrant this court to interfere. The sentences are hereby upheld.
35. ***The appeal fails and is hereby dismissed. The trial court judgement and sentences are upheld.***

Dated, Signed and Delivered Virtually on this 13th day of May 2026.

**HON. T. W. OUYA, OGW
JUDGE**

In the presence of:

Mr. Kirubi for the Appellant

Ms. Ongaki for DPP

Accused is present from Counsel's Chambers

Kevin/Hamza - Court Assistants