



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Republic (Criminal Appeal 125 of 2023)
[2025] KEHC 1730 (KLR) (Crim) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1730 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL 125 OF 2023
KW KIARIE, J
FEBRUARY 25, 2025**

BETWEEN

MILKA NJERI KAMAU APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E3146 of 2021 of Principal Magistrate's Court at Engineer by Hon. E.N. Wanjala(miss)– Principal Magistrate)

JUDGMENT

1. Milka Njeri Kamau, the appellant herein, was convicted of stealing contrary to section 275 of the [Penal Code](#).
2. The particulars of the offence were that on diverse dates between the 22nd day of April and the 30th day of May 2021 at Engineer Town in North Kinangop within Nyandarua County, stole Kshs: 200,000.00, the property of Veronica Wanjiku Macharia.
3. The appellant was sentenced to pay a fine of Kshs.120,000.00 or, in default, to serve twelve months' imprisonment. She has appealed against both her conviction and sentence. Wainaina Gikima & Company Advocates represented her. She raised the following grounds of appeal:
 - a. That the learned magistrate erred in law and, in fact, by narrowly framing the issues in the matter and thereby finding the appellant herein guilty of the offence of stealing and proceeding to convict and sentence her.
 - b. The learned magistrate erred in law and, in fact, in concurring and admitting the complainant's account of events as the true and accurate account of events on the 22nd day of April and 30th



day of May 2021 despite the appellant's submissions and the overwhelming evidence to the contrary adduced in court.

- c. The learned magistrate erred in law and, in fact, by disregarding the evidence adduced by the appellant and over-relying on the respondent's evidence despite the same being uncorroborated and untrue.
 - d. The learned magistrate erred in law and, in fact, by failing to take into consideration the points in law and facts set out in the appellant's submissions dated 16th May 2023.
 - e. The learned magistrate erred in fact and law by entirely failing to consider the defence by the appellant.
 - f. The learned magistrate erred in law and fact by failing to consider the expert witness testimony of DW2, an expert in the banking sector. Given that the issues raised in the matter were technical, this evidence would have greatly informed the court's findings.
 - g. The learned magistrate erred in law and, in fact, by arriving at a decision that was openly biased and solely informed by the testimony and evidence of the respondent's witnesses and without considering any evidence produced by the defence.
 - h. The learned magistrate erred in law and, in fact, by failing to appreciate that inconsistencies and contradictions marred the respondent's case.
 - i. The learned magistrate erred in fact and law in sentencing the appellant and meting an excessive sentence.
 - j. The learned magistrate, basing her judgement on the evidence on record, should have used her discretion in favour of the appellant.
4. The state opposed the appeal through Odero Vena, prosecution counsel. It was contended that the prosecution proved its case to the required standards and that the appeal lacked merit.
 5. This court is an appellate court. As expected, I have carefully reviewed and assessed all the evidence presented to the lower court, keeping in mind that I did not witness any of the witnesses testify. Therefore, I will follow the well-known case of *Okeno vs Republic* [1972] E. A 32 to guide my decision-making process.
 6. Section 268 (1) of the [Penal Code](#) defines stealing in the following terms:

A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.
 7. Veronica Wanjiku Macharia (PW1) runs an Mpesa shop in Engineer Township. She complained against the appellant because she had deposited some money with her, but her account was not credited to Kshs. 200,000.00. The deposit slip displayed her name, but the account number did not belong to her.
 8. The appellant contended that her employee made an error in depositing on June 27, 2021. Pauline Waithira (PW3), an employee of the appellant, testified about an incident that occurred on June 27, 2021. Her evidence was that the complainant made a deposit. She entered the account number while the appellant keyed in the PIN. The money was deposited in the account of a customer known as Jennifer. When the complainant raised a complaint, Jennifer was invited; she reversed the transaction. The appellant contended that this was an error.



9. This transaction was not the subject of the trial, but it informed the court of what was going on in the appellant's shop. There was either laxity or a deliberate scheme to steal from unsuspecting customers.
10. The appellant conceded that the two receipts originating from her, which bore the name "Vero," referred to the complainant but indicated that the deposits made on the 22nd and 30th of April were credited to account number 200267002413. She acknowledged that the account belonged to her (the appellant). However, she did not clarify why the funds deposited by the complainant were credited to her account.
11. The prosecution proved the case to the required standards.
12. The appellant contended that the sentence meted out was harsh. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act, in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James vs. Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R. vs. Shershewcity* (1912) C.CA 28 T.LR 364.

13. Section 275 of the *Penal Code* provides:

Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

14. I have no reasons that would compel me to interfere with the sentence.
15. The appeal is accordingly dismissed.

DELIVERED AND SIGNED AT NYANDARUA THIS 25TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE

