



**Paul v Director of Public Prosecutions (Criminal Appeal  
E069 of 2023) [2024] KEHC 5520 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E069 OF 2023  
TW CHERERE, J  
APRIL 25, 2024**

**BETWEEN**

**KENNEDY KIOGORA PAUL ..... APPELLANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

*(Being an appeal against conviction and sentence in Isiolo Chief Magistrate's Court  
Criminal No. 191 of 2017 by Hon. Lucy.K.Mutai CM) on 02nd February, 2023)*

**JUDGMENT**

**Background**

1. Kennedy Kiogora Paul (Appellant) who was the 2<sup>nd</sup> Accused in the trial, and two others were charged with the offence of stealing from a locked motor-vehicle contrary to section 279 (g) of the Penal Code that was committed on 12<sup>th</sup> May, 2017 by breaking into a locked motor-vehicle No. KAE 490N and stealing therefrom a laptop make HP Probook 65606 s/no. BCB2190BYS and a Nokia mobile phone 2 the property of belonging to Kennedy Kinyua. Appellant was charged with an alternative count of handling the laptop knowing or having reason to believe it was stolen contrary to section 322(1)(2) of the *penal code*.

**Prosecution case**

2. Kennedy Kinyua stated that on the evening of 12<sup>th</sup> May, 2017, he parked his motor-vehicle No. KAE 490N and upon returning shortly thereafter realized that a laptop make HP Probook 65606 s/no. BCB2190BYS and a Nokia mobile phone were missing. That his wife informed him that someone had called her using his stolen phone demanding money. The witness reported the matter to police and was shown a laptop they had recovered which he identified as his.



3. PC Shadrack Mwago upon receiving complainant's report recorded the statement of one Timito Kathambi whose phone number 07038011049 had been used to call complainant's wife and arrested her husband Harun Mamo Roba, who was the 1<sup>st</sup> Accused in the trial. He stated that the 1<sup>st</sup> Accused led him to the house of the Appellant from where was recovered the stolen laptop.

#### **Defence case**

4. Appellant and his co-accused denied the offence. Appellant particularly denied that any laptop was recovered from him.

#### **Conviction and sentence**

5. After the trial, Appellant was convicted of the alternative count of handling stolen property and sentenced to serve 3 years' imprisonment.

#### **The Appeal**

6. The conviction and sentences provoked this appeal mainly on the grounds that the prosecution case was not proved beyond reasonable doubt and that the defence was not given due consideration.

#### **Analysis and determination**

7. This being a first appeal, the court's duty is as was stated by the Court of Appeal in [\*Mark Oiruri Mose v Republic\*](#) [2013] e KLR that:

“It has been said over and over again that the first appellate Court has the duty to revisit the evidence tendered before the trial Court afresh, analyze it, evaluate it and come to its own independent conclusion on the matter but always bearing in mind that the trial Court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and to give allowance for that.”

8. I have considered the appeal in the light of the grounds of appeal and submissions by the Appellant and the DPP.
9. The evidence on record reveals that neither the complainant nor anyone else saw Appellant steal from complainant's locked motor vehicle and that the only evidence against Appellant is that of recovery by the investigating officer.
10. The degree of proof in criminal cases was properly established in the classicus English case of *Woolmington vs. DPP* 1935 A C 462. Similarly, in *Bakare vs. State* 1985 2NWLR, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”.



11. Whereas the trial magistrate appreciated the prosecution’s duty to prove its case beyond any reasonable doubt, the magistrate nevertheless wholly relied on the uncorroborated evidence of the investigating officer and rejected Appellant’s defence without giving any cogent reasons for so doing.
12. To my mind, the defence raised by the Appellant raises reasonable doubts on the prosecution case. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.
13. From the totality of the evidence, I find that this is a case where Appellant ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case does not require many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right.
14. In the case of *Michael Mumo Nzioka v Republic* [2019] eKLR, , the court cited with approval the holding in *Elizabeth Waitibiegi Gatimu vs. Republic* [2015] eKLR where Mativo, J (as he then was) stated that:

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”
15. My finding is that the trial court erred in not giving the defence due consideration and thereby arrived at an erroneous decision.
16. In the end, the appeal succeeds and it is hereby ordered:
  1. The conviction of the Appellant was unsafe and it is hereby quashed
  2. The sentence against Appellant is set aside
  3. Unless otherwise lawfully held, it is ordered that the Appellant shall be set at liberty.

**DELIVERED AT MERU THIS 25<sup>TH</sup> DAY OF APRIL 2024**

**WAMAE. T. W. CHERERE**



## **JUDGE**

Appearances

Court Assistants - Kinoti/Munene

Appellant - Present in person

For DPP - Ms. Rotich (PC-1)

