



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT MILIMANI

ANTI-CORRUPTION CASE NO. 21 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

FAITH NAOME KABESO.....ACCUSED

JUDGEMENT

The accused FAITH NAOME KABESO faced four counts of receiving a bribe contrary to section 6(1)(a) as read with section 18 of the bribery Act No. 47 of 2016. The facts were as follows:-

1. On the 7th day of November, 2017 at Ongata Rongai Police station within Kajiado county, being a person employed in the public service to wit National Transport and Safety Authority as a vehicle inspector, requested for a financial advantage of Kshs.5,000/- from Boru Galgalo Ali, with intent that in consequence she would release his vehicle Number Plates, KAZ 659U which she had confiscated.
2. On the 9th day of November, 2017 at Nairobi area vehicle inspection unit offices, within Nairobi city county being a person employed in the public service to wit National Transport and Safety Authority as a vehicle Inspector, requested for a financial advantage of Kshs.7,000/- from Boru Galgalo Ali, with intent that in consequence she would release his vehicle Number plates KAZ 659U which she had confiscated.
3. On the 9th day of November 2017 at Nairobi Area Vehicle Inspection Unit offices within Nairobi city county, being a person employed in the public service to with National Transport and Safety Authority as a vehicle inspector agreed to receive financial advantage of Kshs.7,000/- from Boro Galgalo Ali, with intent that in consequence she would release his vehicle Number Plates KAZ 659U which she had confiscated.

And lastly

4. On the 9th day of November 2017 at Nairobi area vehicle inspection unit offices, within Nairobi city county, being a person employed in the public service to wit National Transport and Safety Authority as a vehicle inspector agreed to receive a financial advantage of Kshs.7,000/- from Boru Galgalo Ali with intent that in consequence she would release his vehicle Number plates, KAZ 659U which she had confiscated. The Republic called 9 witnesses after accused denied the offences.

PW 1 BORU GALGALO ALI worked with the Kenya Broadcasting Corporation and owned motor vehicle registration number KAZ 659U [hereinafter the vehicle]. It plied as a matatu but had been in the garage and was to go for inspection. On 4/11/2017 his driver called him and told him that the vehicle had had an accident at Olympic Petrol Station. He rushed to the scene and later reported the accident to Rongai police station and went back to the scene. His vehicle had been involved with another whose driver apparently looked drunk and had ran away. Both vehicles were towed to the station. Later the driver of the other vehicle returned and an officer by the name Sheila found him to be drunk and directed both of them to go to the station. She asked them to return the following Monday on 6/11/17 which date the other driver did not turn up. After both could not agree. She told both that the

vehicles go for inspection. There was one Victor who told PW 1 that there was a lady inspector who was around but had requested for tea leaves which was later clarified to be Kshs.2,000/-. This witness went to look for the money but when he returned, he found accused was already there in an NTSA vehicle. She inspected the vehicle and found the inspection sticker had expired and caused the number plates to be removed. The said Victor informed him he had to part with Kshs.20,000/- to have them released. PW 1 then approached the accused directly for inquiries. It is at that point that accused asked for Kshs.5,000/-. He went to look for the money but by the time he returned, the accused had left. He could not get her number from Victor and as he had no choice, he went to the NTSA headquarters at Upperhill Nairobi where he got an acquittance. The acquittance told him that when number plates are removed, they are recorded and kept somewhere and took him to the register. His vehicle had not been recorded in the register. He got accused number and called told her he had what she wanted and accused told her, she had travelled to Bomet. She suggested that they meet on Thursday. The officers who gave him accused's number called him on Tuesday and advised him to go to the EACC which he did. He was introduced to a Mr. Abdi who asked him to return on the Thursday mentioned by accused. While with Abdi he called the accused and told her he was ready. He was given Kshs.5,000/- in 1000 denominations, P. Exhibit 1(a) to 1(e) and a Sony Audio Recorder (P. Exhibit – 3) and was trained on how to use it though he informed the court that he knew how to use the said gadgets. We also signed an inventory (P. exhibit – 4) after which the money was placed in a brown envelop (P. Exhibit – 5). The accused told him that they meet at the Nairobi area police station but she was not present when he arrived there and on calling her, she said she was at the Pangani Police Station. At the NTSA he met a lady called Carolynne who told her that the accused was not present. He again called the accused and told her he had Kshs.2,000/- which she laughed and told him it could not work and that she needed Kshs.7,000/-. Since he had Kshs.5,000/- he told her he would get another Kshs.2,000/- and explained the same to the investigating officer. The officer went back to their offices and returned with Kshs.2,000/- to make it Kshs.7,000/-. He talked to the accused again who told him this time to go and see the lady in the office as they had talked. The lady called Faith (accused) who told her to take the money. The lady then took PW 1 to a room, and she received the money and gave him back his number plates. He explained to the Investigating Officers and they went and arrested the lady who took the money from the drawer. The money was verified and they were asked to sign an inventory (P. Exhibit – 6). They returned to the EACC offices, the audio clip P. Exhibit – 3 was played and he was later asked to sign a transcript (P. Exhibit – 7). He identified the voices in the clip as those of PW 6 Carolynne Boke and the accused. Accused asked for 7,000/-, the court heard, and PW 1 who had Kshs.5,000/- promised to get the extra Kshs.2,000/-. The other lady told PW 1 after taking a call that accused had said 7,000/-, PW 1 then promised to go to an Mpesa to add her up and the court heard him tell somebody that he had been asked for Kshs.7,000/-. In cross examination this witness informed the court that he knew accused name when Victor, the policeman called her. That accused told her his vehicle did not have an inspection sticker and the propeller was hanging. That when he talked to accused, he told her he had brought her what they had agreed. She initially requested for 5,000/- and did not know why she asked for 7,000/- and that he was with PW 6 as they talked and PW 6 also told him that accused had said Kshs.7,000/-.

PW 2 was CAROLYNNE CHEPKURUI an Investigator with EACC who helped in treatment of the Kshs.5,000/- that was used as trap money by PW 1. She prepared an inventory of the money P. Exhibit – 4 and a photocopy of the real money P. Exhibit – 2a.

PW 3 PHILIP MATI an Investigator with EACC on 9/11/17 prepared an extra Kshs.2,000/-. He also prepared an inventory P. Exhibit – 8 and photocopy of the money P. Exhibit – 2b.

PW 4 ALEX KINYANJUI on 9/11/17 was requested to retrieve call logs on HTC phone concerning communication between 0705824806 and 0729675850. He extracted the information and prepared a report. He managed to retrieve 3 entries on phone number 0705824806. The 1st one was on 9/11/2017 at 9:18:06 an incoming message which read:

“Good morning Faith. This is Boru Yule kijana uling’oa number plate Rongai KAZ 659U. You were to call me jana. Kindly get back.”

2nd message dated 9/11/2017 at 9:18:45 was outgoing and read:

“Come to the office.”

Lastly on 9/11/17 at 9:23:15 incoming content read:

“Office iko wapi”

That 0705824806 and 0729675850 had several incoming and outgoing call logs. He produced the report as P. Exhibit – 9.

PW 5, MARTIN MBUVI was also an Investigator with EACC took part in the investigation herein. He was introduced to PW 1 who explained to him the demand of Kshs.5,000/- after which PW 1 decided to report to the EACC. They proceeded to Nairobi area where they had instructed PW 1 to have the officer seeking for a bribe to be recorded to establish a demand (bribe). At Nairobi area PW 1 went into the offices and on return informed them that he had talked on phone and that accused had insisted that PW 1 leaves Kshs.7,000/-. That accused had instructed her secretary (PW 6) to release the number plates on condition that PW 1 deposited Kshs.7,000/-. They analysed the conversation and established a demand of Kshs.7,000/-. After the money was obtained PW 1 went and gave it to PW 6 who released the number plates. She was then arrested. The accused was thereafter summoned to the EACC and had her statement recorded. The secretary who testified as PW 6 informed the court that on the fateful day accused informed her that she was going to Pangani Police Station and had left number plates both for the front and the rear behind. That somebody was to pick them and a report. So, this person went to her office at 12:00 noon as he conversed with accused on phone, he gave PW 6 the phone. Accused told her the guy should give her Kshs.5,000/- and then changed and told PW 6 that the guy should go and add 5,000/-. The guy went out and returned with the money. PW 6 asked PW 1 to go outside and wait for accused to return and give her the number plates. After PW 1 called accused, accused instructed PW 6 to give out the number plates and accept the cash. PW 1 told her the cash was 7,000/-. She took the money placed it in a file and was then arrested. Her hands were swabbed and an inventory P. Exhibit – 6 prepared. In cross examination she confirmed that she was instructed to receive Kshs.5,000/- and after PW 1 and accused did not agree accused told her that PW 1 should add up to Kshs.7,000/-. She knew it was accused who called her as she called her by name and that she was the only one who had left number plates under her custody.

PW 7's evidence was akin to that of PW 5. He swabbed the hands of PW 6 who told them that she had been instructed by her boss to take the money and hand it over to her from the complainant.

PW 8 MUIGAI KAGIA worked with accused. He was called to the EACC on 27/11/17 by PW 9. PW 9 played an audio conversation and was able to recognize the voices of PW 6 and accused. He also identified the accused as the one seated across in court. The audio was played in court and observations were made by the court. A female voice asked "*uko na ngapi*" Meaning "*How much do you have*" The male voice answered "*niko na mbili*" meaning "*I have two.*" The female voice laughed loudly and asked the male voice to wait for her call. Then the female voice said if he did not Kshs.7,000/- there was nothing to discuss. And the female voice says "*wacha nitafute mbili*" meaning "*let me add another two*" and much more. It was from the voices in the audio clip that PW 8 was able to recognize the voices of accused and PW 6. In cross examination PW 8 informed the court that he was aware PW 9 was investigating accused and that they had discussed accused before playing the audio.

PW 9, ABDI OSMAN was the main investigator in this case. He informed the court that he interviewed PW 1 and recorded his statement and also inducted him on how to use the digital recording gadget. He repeated basically PW 1's side of the testimony and laid bare before the court how he coordinated the investigation and had accused arrested. He also recorded her statement. He prepared charges against accused. He also produced the exhibit memo form report as P. Exhibit – 13. The government analyst report as P. Exhibit – 14 copy of motor vehicle number plates for KAZ 656U as P. Exhibit – 15. A letter to NTSA dated 14/11/17 as P. Exhibit – 16 and received a letter of response which he produced as P. Exhibit – 17. Voice and image recognition certificate P. Exhibit 11. DVD of original conversation, P. Exhibit 18. Certificate U/S106B P. Exhibit – 12, Recording device, P. Exhibit – 3, Transcript P. Exhibit – 7. In cross examination he informed the court that PW 6 informed him that she had complained severally to PW 8 about accused conduct of taking bribes.

In her defence, the accused gave a sworn statement. She testified that she was a motor vehicle inspector based in Nairobi. The person who was to train her refused. That was Muigai Kagia (PW 8) because of fears that she would take up his job. Hence, she trained herself. On 7/11/2017 she inspected motor vehicle registration number KAZ 659U a PSV at Ongata Rongai police station. She found the sticker to have expired and ordered the number plates removed. She then prepared a certificate of examination and a prohibition order. As they left the station a gentleman walked towards them and they introduced one another. After advising him to take the vehicle for inspection this gentleman informed her he had booked for, inspection and planned to take it the next day and requested for his number plates. After he told him to come with a compliance certificate, the gentlemen offered her money which she refused and she did not request for Kshs.2,000/-, 5,000/- or Kshs.20,000/-. She then left with the number plates. Number plates were to be kept by PW 8 in the office but he was absent. That PW 6 was under duty to release the number plates on production of the compliance certificate. On 8/11/2017 PW 1 called her and told her he had the compliance certificate and wanted his number plates back on 9/11/17 she received an SMS. She later called him and informed him that she had left the number plates with the clerk for him to pick and sign for its receipt. She then gave the number plates to PW 6. In the 3 days they were in communication with PW 1, they did not discuss money. That her relationship with PW 3 and 6 were bad. Whereas PW 6 refused to show her keys to the washroom PW 8 refused to train her.

In cross examination she said her relationship with PW 8 was frosty and with PW 6 was bad but she did not cross examined them on

the same. She trained for motor vehicle accident inspection at Nairobi area. That removal of number plates was provided for in the Traffic Act. I have also considered the submissions by both parties at the end of the prosecution and defence case as argued by parties. The above is the evidence that the court is now required to consider and come up with a finding on either or not the prosecution proved its case against the accused beyond all reasonable doubt.

From the above evidence the points for determination are as follows:-

1. Whether the prosecution established that the accused requested for a financial advantage from PW 1.
2. Whether accused received a financial advantage.
3. Whether there was sufficient corroboration.
4. Whether there were contradictions and if any how they affected the prosecution's case.
5. Whether the accused was framed.

1. Whether the accused requested for a financial advantage from PW 1

It is not in dispute that PW 1's vehicle KAZ 659U had had accident on 4th November 2017. The vehicle and another both of which were involved in the same accident were then required to go for inspection. On 6th November 2017 the accused inspected KAZ 659U and found the inspection sticker expired. She then confiscated the number plates PW 1 who was present approached the accused then and he testified that it is at that point that accused asked for Kshs.5,000/-. He went to look for the money and by the time he returned accused had left. He then went to the NTSA offices and managed to get her number. When he called her, accused suggested that they meet on a Thursday. PW 1 who did not get his number plates registered in a register at the NTSA as required was advised to report to the EACC who then laid a trap after being introduced to PW 9 an investigator from the EACC. He was given a recording gadget and he managed to record the accused. The recordings were played in court. The voices in the recordings were authenticated by way of recognition by PW 8 a colleague of both PW 6 and accused. The accused asked for seven thousand, the court heard and PW 1 promised to get the extra 2000/-. PW 1 then told the investigators that he had been asked for 7,000/-. PW 6 worked with accused who on the fateful day left her number plates and informed her (PW 6) that somebody was to pick them up. This somebody who happened to be PW 1 went to her office at 12:00 noon. PW 1 had a conversation on phone with accused and PW 1 handed over his phone to PW 6. PW 6 informed the court that PW 1 should go with Kenya Shillings 5000/- and PW 6 was not happy and asked PW 1 to go outside and wait for accused to return and give him his number plates. PW 1 then called accused again who instructed PW 6 to give out the number plates and accept cash. She took the money placed it in a file and was then arrested. It was also her evidence that accused and PW 1 did not agree and accused told her PW 1 to add up to Kshs.7,000/-. The recording gadget was produced as P. Exhibit – 3. The above evidence to the extent of the demand was not controverted and find as a fact that initially accused demanded for Kshs.5,000/- and later upped her demands to Kshs.7,000/- which PW 6 received on her behalf. I find as a fact that accused requested for a financial advantage.

2. Whether accused received a financial advantage:

From what I have analysed above, it is quite clear that accused was not at the scene of crime when money exchanged hands. However, what is clear is that she was giving instructions on phone. PW 6 informed the court that when PW 1 gave her the phone to speak to accused, accused called her by name and she recognized the voice as that of Faith. That the conversation led to the receipt of Kshs.7,000/- by PW 6 on behalf of the accused. Accused herself informed the court and acknowledged receiving an SMS from PW 1 and then asked him to go to the office. PW 4 by way of P. Exhibit – 9 demonstrated that on 9/11/2017 there was an outgoing message at 9:13:45 which read:

“Come to the office.”

Evidently though accused was not physically at the scene. The court finds that she was constructively at the scene. This placed the accused at the scene of crime and constructively received a financial advantage.

3. Whether there was sufficient corroboration

Corroboration is that evidence which confirms or support a statement, theory or finding. In law the evidence of PW 6 is akin to that evidence of an accomplice. Evidence of an accomplice to be adopted and used ought to be corroborated in material particulars. PW 6 testified that accused was her boss. Accused instructed her to receive the money and release number plates which she had confiscated to PW 1, which PW 6 did. The evidence found in P. Exhibit – 9 Asking PW 1 to go to the office. The evidence of arrest of PW 6 which was not controverted, the evidence of recovery of the treated money, P. Exhibit 4, P. Exhibit 2(a), P. Exhibit 8 and P. Exhibit 2(b) i.e. the inventories of Kshs.5000/- and Kshs.2000/- and by the fact that they were recovered after the instructions from accused which were recorded in P. Exhibit – 3 and translated to P. Exhibit – 7 the transcript and the fact that PW 8 recognized both the voices of PW 6 and accused in P. Exhibit – 3 the recording device corroborated the evidence of PW 6 besides its corroboration by the evidence of PW 1 who was at the scene of crime.

4. Whether there were contradictions and if any how they affected the prosecution's case.

There were submissions on contradictions between the evidence of PW 1 and PW 5. According to the defence PW 1 was not clear on who asked for money. That PW 1 informed the court that one Victor asked for money on behalf of an unnamed person. That what was sought for was Kshs.5,000/- and later Kshs.5000/-. Further that PW 1 informed the court that accused asked him to return with Kshs.5000/- in order for accused to return the number plates whereas PW 5 who recorded PW 1's statement testified that PW 1 informed him that the Kshs.5,000/- was meant for accused in order to forebear from charging PW 1. Further that PW 1 informed the court that he went to look for the money and on return found the accused had left whereas PW 5 informed the court had left whereas PW 5 informed the court that as the complainant persuaded the accused to return the number plates the accused drove off. To the defence these were material contradictions. The court listened to the conversation in P. Exhibit – 3. The contradictions complained of were contradictions before the actual receipt of money by PW 6, hereinabove the court dealt with the relationship as concerning receipt of the money by PW 6 and accused. The court finds that if there were contradictions, they were minor such that they did not fatally affect the prosecution case and happened before receipt of bribe.

5. Whether the accused was framed

It was the contention of the accused that there existed bad blood between herself PW 6 and PW 8. For PW 6, the accused said she refused to show her the washrooms. For PW 8 the accused informed the court that he refused to train her as he feared accused would take up his job. The record indicates PW 1 met accused for the 1st time at the Ongata Rongai police station. Next at the NTSA offices. The evidence as enumerate earlier demonstrated how PW 6 received money on behalf of accused. Such was the relationship as demonstrated by evidence. The issue of bad blood and or abomination was raised by the accused in her defence. The court finds that the same is an afterthought and is dismissed. However, even if that had been the case did PW 6 and PW 8 frame the accused" PW 6 explained that accused was her senior at work place who gave her number plates and asked her to give them to PW 1 upon PW 1 giving her Kshs.7,000/- which scenario took place. PW 8 was also her colleague at work. It is not PW 6 or PW 8 who initiated the charges against accused in order to raise the defence of bad blood against them. PW 6 came into picture after the demand was made PW 8 was asked to identify the voice of accused. There was no indication of bad blood between PW 1 and accused in order for accused to have raised that defence against PW 1. There was also no previous relationship between accused and PW 1. Hence the court finds that the defence of bad blood, against PW 6 and PW 8 does not fit as a defence in this case.

After considering the above it is the finding of the court that the prosecution proved its case against the accused beyond all reasonable doubt and the accused is convicted as charged under section 215 of the Criminal Procedure Code Cap 75, Laws of Kenya.

Dated at Nairobi this 17th day of October 2018.

D.N. OGOTI

CHIEF MAGISTRATE

Delivered in the presence of:

No appearance for accused

M/S Mwangi holding brief for Kivali for prosecution

Korir Court Assistant

This 17th day of October 2018.

D.N. OGOTI

CHIEF MAGISTRATE

Court – Records.

Prosecution – We do not have any records of accused.

MITIGATION

Juma for accused. I request for two minutes to talk to accused.

Court – File placed aside.

D.N. OGOTI

CHIEF MAGISTRATE

9.50A.M.

MITIGATION

Mr. Juma in mitigation – The accused is sorry and apologetic. The accused has been punished by way of termination of employment. Accused has a 1 year old son. She prays for lenient punishment.

SENTENCE

The court has considered the mitigation of accused. She is said to be apologetic and has a 1 year old son. The court appreciates the mitigation. It is however not lost to the court about the accident on the Kenyan roads one last week where reports indicate that 56 were lost and a passenger transport vehicle plied on public roads for 3 months without required documents. The scenario herein is the same where an NTSA officer instead of looking at the interest of the public looked at her own interests for self-gain to the prejudice of the public this must be discouraged. I have considered the maximum sentence provided for after considering all the circumstances of the case, this should be a warning to the rest who intend to put innocent lives at risk on our roads. The accused to pay a fine of Kshs.300,000/- on each count in default to serve 2 years imprisonment. Sentence to run concurrently. Right of appeal 14 days.

D.N. OGOTI

CHIEF MAGISTRATE

17/10/18



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