

**KENYA POLICE
CHARGE SHEET**

POLICE CASE NO. 411/110/2007
DATE TO COURT 31/7/2007
CORT FILE NO. A/c 7/2007

OB. NO.34/ 27/07/2007

Christian Names in full or Name	Surname or Father's Name	Identity Certificate No.	Sex	Nationality or tribe	Apparent Age	ADDRESS(include District and Location where Applicable)
WILSON NZAU	KINYALA	10434245	M	KAMBA	A	KITUI
CHARGE COUNT I	SOLICITING FOR 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.					
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<p>WILSON NZAU KINYALA On 18th July 2007, at Igembe land Adjudication office in Meru North District, within Eastern Province, being a person employed by a Public body, to wit, Ministry of Lands, as a surveyor II, corruptly solicited for a benefit of Kshs 2,000/= from JOHN NTOITHIRIA M'MUGWONGO as an inducement, to falsify the land register in respect of land reference number 3159 Amungeti 'B' Adjudication Section, a matter in which the said Public body was concerned.</p>					
If Accused Arrested	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue	
YES	27/07/2007	W/O	31/07/2007	CASH Bail Out on bond 20,000/=		
Remanded or Adjourned to						
Complainant and Address	REPUBLIC OF KENYA THRO' KACC					
Witnesses..	1. JOHN NTOITHIRIA M'MUGWONGO, 2. OTHERS TO BE STATED ...			3. 4. 5.		
Sentence Court and Date ...	SPM COURT NAIROBI ON If fine paid.....					

[Handwritten signature]
27/7/07

CERTIFIED TRUE COPY
OF THE ORIGINAL
[Signature]
Date: 22/8/19

Signature..... *[Signature]* IP

Officer In Charge: **EMBU** Police Station

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT EMBU.

A/C NO. 7 OF 2007

REPUBLIC-----PROSECUTOR

VERSUS

WILSON NZAU KINYALA-----ACCUSED

JUDGMENT

13/1/11

The accused is charged with count 1 soliciting for a benefit and count II, receiving a benefit contrary to section 39(3) (9)^(a)₁ as read with section 48 (1) of the Anti – Corruption and Economic Crimes Act No. 3 of 2003. The particulars of the offence are set out in the charge sheet.

The complainant's evidence is that on 12/2/91 he was given a parcel of land No. 3159 from Block 622 Nyambene District. That was noted in his notebook PEX 1. One Michael was also given the same parcel of land and sued the complainant.

On 16/6/2006, court ordered they stay in their respective parcels of land. On 18/7/07, he went to report a boundary dispute between him

and his neighbour. The lands officer noted his complaint and also informed him the land is not his. The officer told him he could assist him get the land if he gave him Kshs.2000/= in order to rectify the register. He went and borrowed Kshs.1000/= from his friend and he took it to the officer. He identified the officer as the accused herein.

The accused demanded balance of Kshs.1000/= as he went borrowing from other friends, one of the friends asked him to report the matter to KACC. He reported by telephone on 19/7/07.

PW9 an investigator with KACC was allocated the case and was assisted by PW6 and PW8. They traveled to Maua where they met the complainant and arranged that he records a conversation with the accused. They also fitted complainant with recording device PEX 1,2 and 3 and asked him to meet accused and record a conversation so as to verify the allegations. They had with them trap money and copies of money to be used in event trap operation succeeds.

The complainant was given recording instruction and went and met accused and did the 1st recording on 20/7/07. The transcript for the recording is PEX 9. PW9 listened to the recording and was a view there was enough basis of demanding for a bribe.

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He fitted complainant again on 25th and 26th July with same recording device, PEX 1-3, and instructed him to meet accused, hand over the trap money only on demand. He gave to the complainant the trap money Kshs. PEX 7. The complainant did have a conversation on 25th and 26th. On 27/7/07, he recorded a conversation whose transcript was produced. The accused did not demand the money and it was not given out. The investigators decided to arrest him on 27/7/07, recovered the land register and produced it as PEX 10.

The recordings were played to PW2 and PW3 and they identified the voice of accused herein. A voice identity certificate was produced as PEX 11. After investigations, accused was charged with present offence.

The defence of accused is that in July 2007, the complainant herein went to his office to enquire of his ^{plot} #NO. 3159. The accused checked for him and informed him it was registered in names of Silas Mutia Koome and was subject of a high court suit whereby it was injuncted. thus even an objection case couldn't be heard unless the injunction was lifted.



That on 18/7/07 at 8.30Am he went to his boss John Muthengi and asked for permission to travel to his home and was advised to write a letter requesting off duty. The letter was produced DEX 1. He was allowed to leave and he left and arrived at his home around 4.30PM and went to office of area chief to request for permission to brew traditional liquor for a family ceremony. He was allowed and he produced letter dated 18/7/07 as DEX 2. DW 2, the chief testified that accused arrived at his office around 5.00pm and on request was issued with the letter. Further that he went back to officer on 22/7/07. Thereafter complainant tried to meet accused and offered him some money. On 27/7/07, accused was arrested and charged. That being the prosecution and defence, issue for determination is whether;

Accused solicited for a benefit on 18/7/07.

Accused received a benefit on 18/7/07.

As to whether accused solicited for a benefit on 18/7/07.

As to soliciting, the ^{owners} ~~it~~ is on the complainant to show court that accused took him through the processing of urging him or leading him to give hand the benefit or the process of urging him to commit

the crime. In complainant's evidence, there is no such process. All he testified is that on 18/7/07 he went to lands office to report a boundary dispute with his neighbour and the lands officer told him that land NO. 3159 was not his. But that they can assist each other and he asked for Kshs.2000/= to rectify the register. There are no soliciting words.

The accused on the other hand said he was not in office on 18/7/10 as he left early to seek permission from his boss for 2 days off duty. He produced the letter seeking permission as DEX 1. The same day he was in his home village as testified by DW2 where he applied and was issued with a permit DEX 2.

The investigating officer on the other hand said he did not receive initial report hence not sure if there was a complaint of soliciting. As such the count 1 is not proved and I find accused not guilty of count 1 and I acquit accused under section 215 of CPC.

As to count II,, the same arguments applies. In addition, the prosecution ought to have called the neighbours complainant borrowed money from to confirm his allegations since the accused defence of alibi casts doubts in courts mind if accused met

complainant on 18/7/07. Moreover prosecution needed to call evidence to show that rectifying the land's register was a matter in which Igember Land Adjudication office was concerned. In the evidence of investigating officer in cross examination he said that in the initial report, the name of the officer demanding money was not given. It did not indicate he had received Kshs.1000/= and it did not ^{say we} pay ~~it~~ would change the number.

Overall investigations and evidence before court was of little evidential value in the sustaining a conviction. Count 2 is also not proved. I find accused not guilty of count 2 and acquit him under section 215 of CPC.

M. WACHIRA – CM

14/1/11

Court

Judgment read and signed in presence of Mr. Njeru Ithaca for accused.

M. WACHIRA – CM

14/1/11

two paragraphs left.

