

REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION COURT
AT KERICHIO
ACC. NO. 3 OF 2006

REPUBLICPROSECUTOR
VERSUS
BROWN INZIANIACCUSED

JUDGMENT

Brown Yakhama Inziani (*herein after called the accused*) stands charged with the offence of soliciting for a benefit **contrary to section (3)a** as read with **section 48(1)** of the **Anti-Corruption and Economic Crimes Act No. 3 of 2003**. The particulars set out in the charge sheet are briefly that on 16.5.2006 at Kericho police station, being a person employed by a Public body, to wit, the Kenya Police force as an Inspector, while acting as the officer commanding Kericho Police Station, he corruptly solicited for a benefit of Kshs. 20,000/ from Peninah Nyatichi Omambia as an inducement to forebear charging Osborne Omambia with an alleged offence of piracy, a matter in which the said public body was concerned. The accused denied the charge. A summary of the evidence adduced is as follows:-

Osborne Omambia (PW1) was arrested on 12.5.2006 for an alleged offence of piracy. He told the court that he was released on 14.5.2006 after his

mother, who is the complainant herein deposited a cash bail of Sh. 5,000/ or secured a bond of Sh. 5,000/ for his release. He identified the bond in Court - **Exhb.1.**

Peninah Nyatichi Omambia (PW3) told the Court that on 12.5.06 at about 1 pm, his son (PW2) called and informed her that he had been arrested. She went to the police station at 4pm and saw him. She was then shown three men and a woman at the police station. They all entered into the station building. While there one of them showed her the figure of 5,000/- that was printed on the screen of a mobile phone and told her that they needed that sum of money if they were to release her son. One of them who was introduced as Njagwa did the bidding. On 13.5.2006 she went back to the station but the four people from the Music Copy right society insisted on being given 5,000/-. On 14.5.2006 she went back to Kericho police station and pleaded with the accused, who was then the acting officer in charge to release her son. He however demanded that she gives him Sh. 20,000/- if he was to do so. He accepted Sh. 5,000/ that she had for purposes of bonding the son to appear in Court. PW2 was then released after Exb 1 was issued.

On 16.5.2006 PW2 was fitted with a recording device and she went and talked to the accused. She specifically asked the accused to drop the matter and release computers and amplifiers that had been confiscated from her son. The accused then allegedly reduced the sum to 10,000/ . PW3 then went to Anti-corruption personnel who had fitted her with the tape and a trap was set. On 17.5.2006 KACC personnel gave him 10,000/ to trap the accused with. She went to the police station but the accused refused to take it. Accused was then arrested.

Upon arrest, accused was taken to his superior (Sgt. Kiarie Waruare) for information who in turn informed the provincial police officer.

Sgt. Salesio Kinyua Mugo (PW7) and Sgt. Juma Musi (PW8) told the Court that they got the initial report from one John Ajwang (PW4). They subsequently met Peninah Omambia and the trap was set to nab the accused. PW8 prepared a transcript of what the complainant recorded.

In his defence, the accused person stated that during the week of 12th to 16th May, 2006 he was in charge of the station. That four people went to him alleging that their music was being pirated and sought his assistance. He assigned two police officers to the reportees. On 14.5.2006, PW3 requested him to release her son on bond. The son had been arrested for pirating music. That being aailable offence, he released him on Cash bail of Kshs. 5,000/= . PC Kiarie effected the release. That he never asked PW3 for any bribe. He categorically denied that the voice in the recording that was played in Court was his. He added that he last met Sgt. Musi (PW8) while they worked in Nairobi. He contended that he worked at the radio control room while Musi worked for the CID and were not acquaintances therefore discounting Sgt. Musi's evidence that he was able to identify his (accused's) voice. He produced as his exhibit the statement which he recorded at Sosiot Police Station in which he denied that the voice on the tape was his.

The issue for determination is whether the accused verbally demanded for 20,000/ as alleged. The prosecution relies heavily on the tape recording in the micro cassettes the well produced as exhibits. Counsel has submitted

that Sgt. Musi, who prepared the transcript admitted that he is not a voice expert. Counsel pointed out several instances where the sergeant stated that he could not identify all the voices in the tape and that he last met the accused about a decade ago. Counsel also pointed out that PW5, Sgt. Waruare, who was the accused's immediate boss on the day he was arrested told the court that he did not identify the voices on the tape save that they were of male and female persons. Counsel submitted that the accused's voice sample should have been taken and compared with that in the recording by a voice expert. He relied on the high Courts decision in

ABDULAIH JARSO DIMA V.R. Nkr Cr. APP NO. 212 OF 2006

where it was held that evidence of tape recording is not exempt from the requirement of law as to voice identification. That it has to be established that the voice in the tape is that of the accused.

At the close of his evidence in chief Sgt Musi, PW8, told the court that

I identified the voices of the complaints after listening to them before and after taping and they identified their own voices. I was familiar with the accused's voice.

After the tape was played out in Court (during PW3 evidence in chief), PW3 did not state anything about it. She did not tell the court whether or not her voice was recorded and the particular instances when the demand for 20,000/- was made.

The tape was played in Court and it was not very clear. The possibility of one mistaking the voices and what was said is quite evident.

This is a case whereby the tape recording was the only evidence that was adduced to corroborate what Peninah Omambia told the Court. In the absence of any other evidence to support her allegations, I must find for the accused. I accordingly do find that the evidence that was adduced is insufficient to sustain a conviction. The court must accordingly uphold the accused's defence that he never demanded for a benefit and that the voice in the recording is not his.

I find that the voice in the recording may not be the accused's.

I do afford the accused the benefit of doubt and acquit him under section 215 of the CPC.

W. NYARIMA

Ag. SPM

18.6.08

Coram as before

Accused present

C/P IP Wanjohi for prosecution

CC Benzy

Mr. Meroka present

Prosecution I ask for certified copies of the proceedings.

W. NYARIMA

Ag. SPM

18.6.08

COURT Copies of proceedings will be provided as applied for.

W. NYARIMA

Ag. SPM

18.6.08

MR. MEROKA We pray that the securities be released.

W. NYARIMA

Ag. SPM

18.6.08

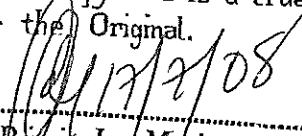
COURT Allowed.

W. NYARIMA

Ag. SPM

18.6.08

I Certify this is a true Copy
of the Original.



Ag S, Principal Magistrate
Kericho.