

**KENYA POLICE**

**CHARGE SHEET**

POLICE CR.021/10/ 2015  
 DATE TO COURT 16/2/2015  
 COURT FILE NO ACC.2 / 2014

OB.NO :38/11/2/2015

Christian Names in full or Name <b>EDWARD</b>	Surname or Father's Name <b>ODHIAMBO</b>	Identity Certificate No. <b>N/A</b>	Sex <b>M</b>	Nationality or tribe <b>KENYAN</b>	Apparent Age <b>A</b>	ADDRESS(include district and Location where <b>C/O BOX 90594 MOMBASA</b>
CHARGE COUNT I	CORRUPTLY 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><b>EDWARD ODHIAMBO:</b> - On the 12<sup>th</sup> day of May, 2014 at Central Police Station ,in Mombasa town within Mombasa County being a person employed by a public body to wit ,National Police Service as a Police Corporal ,corruptly solicited for a benefit of kshs 20,000/= from Ngoma Musa Mohammed as a inducement to release one Iddi Yusuf Sheikh Tunnu ,a Tanzanian National who had been arrested for being in Kenya without relevant documents, a matter relating to the affairs of the said public body.</p> <p>( FOR COUNT TWO SEE ATTACHED SHEET )</p>					
If accused arrested	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Amount	Bail and	Is Application made for Summons to Issue
<b>YES</b>	<b>9/2/2015</b>	<b>W/O</b>	<b>N/A</b>	<b>CASH 10,000/=</b>	<b>BAIL KSH</b>	<b>N/A.</b>
Remanded or adjourned to						
Complainant and Address	<b>REPUBLIC OF KENYA THRO' EACC</b>					
Witnesses	<b>1. Mr. Ngoma Musa Mohamed AND OTHERS TO BE STATED</b>					
Sentence Court and Date ...	<b>ANTI - CORRUPTION COURT MOMBASA.....If fine paid.</b>					

Officer/In charge.....Port Police Station, Mombasa.

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*(Handwritten signatures and stamps)*

Mhe/ 7357/2015

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CHARGE COUNT II	<b>CORRUPTLY RECEIVING 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</b>
PARTICULARS OF OFFENCE	<b>EDWARD ODHIAMBO</b> :- On the 12 <sup>th</sup> day of May, 2014 at Central Police Station ,in Mombasa town within Mombasa County being a person employed by a public body to wit ,National Police Service as a Police Corporal ,corruptly received a benefit of kshs 11,000/= from Ngoma Musa Mohammed as an inducement to release one Iddi Yusuf Sheikh Tunnu ,a Tanzanian National who had been arrested for being in Kenya without relevant documents, a matter relating to the affairs of the said public body.

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Officer/In charge.....Port Police Station, Mombasa

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REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT  
AT MOMBASA  
ANTI CORRUPTION CASE NO. 2 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD ODHIAMBO.....ACCUSED

JUDGEMENT

EDWARD ODHIAMBO (the accused”) faces two counts of Anti-corruption and Economics Crimes To wit, Corruptly soliciting for a benefit contrary to Section 39 (3) ( a) as read with Section 48 (i) of the Anti-corruption Economic Crimes Act No. 3 of 2003 and corruptly receiving a benefit contrary to the same statutory provisions.

The particulars of the first count are that on 12/5/2014 at Central Police Station in Mombasa Town within Mombasa County, being a National Police Service employee as Corporal, the accused corruptly solicited for a benefit of Kshs. 20,000 from Ngome Musa Mohamed (hereinafter referred to as “Musa”) as an inducement to release one Iddi Yusuf Sheikh tunnu (“Iddi”) who is a Tanzanian National who had been arrested for being in Kenya without relevant documents.

With respect to the Second count, it is alleged that on the same date and the same place as above, the accused received a benefit of Kshs. 11,000 from Musa as an inducement to release Iddi from Police custody.

The accused denied both charges. The Prosecution case is that on the material date the police arrested Iddi for being unlawfully present in Kenya while he is a Tanzanian national. The arresting officers were from the Tourist Police Unit

and included the accused person. One Fina who does not seem to have testified is said to have tipped off officers from the Ethics and Anti corruption Commissions (EACC) Mombasa that the accused solicited for Kshs. 20,000 as a bribe, to release Iddi. Fina gave Kshs. 10,000 to Musa for transmission to the accused to facilitate the release of the suspect. In his testimony, Musa didn't however, confirm the receipt of the alleged bribe money. The evidence prompted the prosecution to apply for his declaration as a hostile witness which application the court acceded to.

Upon cross examination by the prosecution and defence counsel, Musa maintained that he never offered any bribe to the accused. According to him, a lady whose name he couldn't recall had only sent her to Central Police Station to inquire Iddi had been arrested. He was also interested in the matter because, like Iddi, he was a Tanzanian Citizen as well. He had made inquiries at the station and met the accused. After hearing his plea the accused allegedly agreed to release Iddi on humanitarian grounds since he was a young boy. Iddi was then released without payment of any bribe only for the Anti- corruption officers to claim later that he had bribed the accused. Musa. Denied having recorded any statement with the E.A.C.C showing that he gave a bribe to the accused. The witness further stated that the accused never solicited for any bribe.

The officer commanding Central Police Station at the material time (PW3) authorized the release of Iddi. He told the court that no bribe was paid for the release.

The accused was placed on his defence following the close of the close of the prosecution case. By sworn evidence he confirmed that Iddi was indeed arrested and detained at Central Police Station, Mombasa, on 12/5/2014. He

further admits meeting with Musa at the station who requested for Iddi's release owing to his young age. Out of empathy, the accused requested PW3 to authorize his release and he gave his approval. The suspect was then released from police custody. The accused denied soliciting for or receiving a bribe as inducement to release Iddi.

Regarding the 1<sup>st</sup> count, the issues for determination are as follows:

- a) *Whether the accused solicited for a benefit of Kshs. 20,000 or any other amount from Musa.*
- b) *If the solicitation was made, whether the money was meant to corruptly induce the accused to release Iddi.*
- c) *Has the charge been proven beyond reasonable doubt*

Musa who is said to have given out alleged bribe money denied the claim adding that the accused didn't also solicit for any money. His cross-examination upon being declared a hostile witness to the prosecution didn't, in my view discredit his testimony. The said Fina who was apparently allegedly privy to information that a bribe was demanded to release Iddi did not testify. In effect the key prosecution witness including Pw3 gave evidence hostile to the prosecution. The court takes note of the fact that the accused was not found or seen receiving or soliciting the bribe.

In the premises, there is no evidence establishing beyond reasonable doubt that the accused solicited for a bribe in order to cause the release from the police custody of the said Iddi. Owing to this finding, the question as to whether the alleged bribe was inducement for release of the detainee does not arise for determination.

On the evidence on record, I therefore find that the prosecution failed to prove the first count beyond reasonable doubt.

The second count must fail for the same reasons. There is no evidence irritably pointing to receipt of the stated sum of Kshs. 11,000 or any other sum by the accused. The evidence of the Principal Prosecution witnesses in fact exonerates the accused person. That the prosecution was mounted about a year after the alleged commission of the alleged offences, further casts doubt on the credibility of the Prosecution evidence. The prosecution also failed to prove the second count beyond reasonable doubt.

The accused is hereby acquitted of the offences charged in the two counts pursuant to the Provisions of Section 215 of the Criminal Procedure Code. The cash bail herein deposited by or on behalf of the accused is ordered refunded.

J.M. NANG'EA – CM

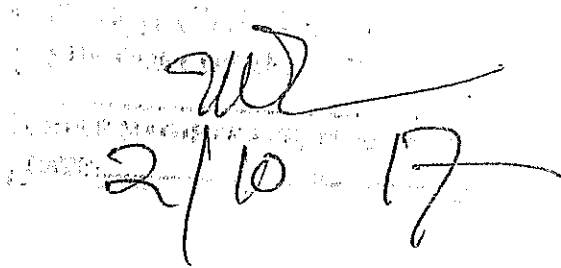
20.9.2017

Before J.M. Nang'ea - CM

Order

I have read the letter dated 20.9.2017 and affidavit the accused herein swore on 19<sup>th</sup> September, 2017. The cash bail herein is ordered refunded to the accused herein, Edward Odhiambo

HON. J. NANG'EA  
CHIEF MAGISTRATE.  
20.9.2017

Handwritten signature and date. The signature is a stylized cursive mark, and the date is written as '2/10/17'.