

PRINCIPAL

IN THE CHIEF MAGISTRATE'S COURT AT KERICHO

CRIMINAL CASE NO. 20 OF 2005

REPUBLICPROSECUTOR
VERSUS
JOSEPH MULEWA.....ACCUSED

JUDGMENT

Mr. Joseph Ndemwa Mulelwa (the accused) is charged with two counts of corruption contrary to **Section 39(3) (a)** as read with **Section.48 (1) of the Anti-Corruption and Economic crimes Act No. 3 of 2003.** on count I it is alleged that on 16.8.2005, at Kilgoris Law Courts of Transmara District in the Rift Valley Province, being a person employed in ^athe Public body Viz Kenya Police Force as a Court Prosecutor, the accused corruptly agreed to receive a sum of Kshs. 5000/= from one Kipkemoi Wilson Koech as an inducement for him to terminate Kilgoris Criminal case number 645/2004 a matter in which the public body was concerned. The accused denied that charge. On count II it is alleged that on 16th August 2005, at Kilgoris Law Courts of Transmara District in the Rift valley province, the accused, being a person employed by a public body the Kenya Police Force, as a Court Prosecutor, corruptly received Kshs 2000/= from one Kipkemoi Wilson Koech as an inducement for him to terminate Kilgoris Criminal case No. 645 of 2004 a matter in which the public body was concerned. The accused denied this charge too. Plea was taken on 17/8/2005 and trial began on 14/3/2006 and ended on 4/8/2006. The accused was represented by Mr. Meroka then later Mr. Ogutu.

PW1 was Mr. Wilson Nkunja Kaberia a Resident Magistrate based at Kilgoris Law Courts. He told the court that on 16/8/2005 he was in court when he saw 3 people enter the court; talk to the accused whom he said was his court prosecutor and walked out with him. He said when he adjourned at around 11.00a.m he learnt that the accused together with his court clerk called Rotich had been arrested on allegations of soliciting a bribe from one Wilson Kipkemoi Koech who was then facing a criminal charge in criminal case No. 645/04 pending then in Kilgoris Law Courts as evidenced by bail/bond document produced as P.Exh.1.

He swore that earlier on Wilson K. Koech had failed to show up in criminal case 645/2004 before him and he issued a warrant of arrest. Later on 16.8.2005, so the witness stated, Wilson returned to court and a warrant issued against him was lifted as P.Exh.1 could show that Wilson had been bonded to go to court on 30.8.06. *cross- examined, the witness told the court that he had never heard allegations of soliciting bribes against the accused.*

← upper
cab
hex

PW.2 was Wilson Kipkemoi Koech who gave the court the background events to his being arrested. He told the court that he had differed with some of his villagers over ownership of a piece of land and that those people he differed with destroyed his house and he reported to police in Kilgoris who arrested those suspects that same day of 21.8.2004. Police allegedly told him to show up at their station at Kilgoris on 25/8/2004 with witnesses. He said he did so with witnesses but the police kept them from 10.00a.m until the evening without recording their statements.

He told the court how he returned the following day with two witnesses and again they were kept from 9.a.m to 11.00a.m when his two witnesses grew impatient and left. He said he stayed on up to around 2 – 3 p.m. When the police officers at Kilgoris police station turned against him and threw him

← no
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stop

into their cells without cause. He said that the following day he was taken to Kilgoris court where he learnt of the charges of giving false information against him. He said he was in remand for 14 days before he was bailed out on a Ksh. 20,000/= worth of bail by a cousin of his. He said he kept going to court from that time for about one year when he complained that his case was not going on. It was then that he met a court official called Shira who referred him to the court prosecutor and a clerk. The clerk in turn referred him to the accused.

The accused allegedly told PW2 that if he wanted his case to be completed he should sell a cow and take Ksh.10,000/= to him in order to **“finish”** the case. He said he had no money then.

He said he left Kilgoris for his home to look for that money. That is when he met someone who took him to Nairobi to meet KACC officers who recorded his complaint and took his phone number promising to call him later. He told the court how he later met with the KACC officers on 16/8/2005 and was fitted with a tape recording device and shown how to operate the same. He said he proceeded to meet the accused at Kilgoris Law Courts where accused arranged a rendezvous named as Kagwe Hotel.

PW2 told the court how the accused asked him if he had gone **“na hiyo kitu”** which he understood to be that money required. He said he had the audio-recorder on and that when the accused asked to be given the money he excused himself to **“collect”** it from a shop. He told the court how he dashed back to a Hotel called Farmers and met the KACC officers who took the tape aside then refitted the same on him plus some money in an envelop produced as P.Exh.5 and told ^{him} not to touch the same till it was demanded. He said the money was Ksh.5000/= in notes only. He said he proceeded to Kilgoris Law Courts with the KACC officers following him behind.

At Kilgoris Law Courts he found the accused and he sat therein. After a while the accused beckoned him to go out of the court with him and he obliged. Outside the court the accused asked him "Lete" and he gave the accused the Ksh.5000/= he had and accused put it in the left hip pockets of his (accused's) trousers produced as P.Exh. 6. He told the court that the accused then entered the court room as he remained outside and the KACC officers who were watching the events followed the accused into that court and later coming out with him.

He told the court that the accused was with a lady police woman when he taped the conversation about the Ksh.5,000/= he allegedly had for the accused. The witness told the court that he took his complaint to KACC when accused had asked him for Ksh.10,000/= to finish that case. He said he had never differed with the accused before and denied being ^{actuated} ~~acquainted~~ by **vendetta**.

PW3 Paul Rotich a clerk at Kilgoris law courts told the court that he met the PW2 on 16.8.06 when warrant of arrest against him was lifted. He told the court later that day a KACC officer met him and held him alongside the accused upto Kericho Police station where he recorded a statement with the police. He said Kagwe hotel was 70 metres outside Kilgoris court. He said he was no friend of PW2 whom he referred to by a nickname "Raila" He said he saw the accused on 15.8.2005 at Green Hotel and asked him to be in court the following day. He denied having referred the PW2 to the accused nor taking 2000/= when filling the bond form in respect of PW2. He portrayed PW2 as a liar.

PW4 was Robert Kipkemboi Birir an investigator with KACC since year 2003 having earlier worked for KACA (Kenya Anti-corruption Authority) ACPU (Anti-corruption Police Unit)

He told the court how he with PW5 and PW6 travelled to Kilgoris on 15/8/2005 to deal with a complainant of a corrupt act. The complainant was alleging that a court prosecutor was demanding 10,000/= in Kilgoris Law Courts. They met PW2. He told the court how on the morning of 16.8.2005 they fitted PW2 with audio-recording devices and told him to go and have a recorded conversation with his suspect. PW6 and PW5 surveilled the PW2. Later the team assembled to listen to a recorded conversation taken back by PW2 and PW4 told the court he established a bribe demand.

He told the court how he had traveled from Nairobi with two genuine Ksh.1000/= notes and fake Ksh.8000/= to act as a decoy to fill the demanded sums of money. He told the court that when the bribe demand from the tape showed Ksh.5000/= he put on gloves to assemble the treated trap money giving two genuine currency notes of Ksh.1000/= and 3 decoy notes. The team swang into action and 45 minutes later PW4 was called to the scene of action and he drove to Kilgoris Law Courts and found the accused under arrest. He said he drove to Kericho with the accused and a Court Clerk called Rotich. He said he did not know the accused before that day. He denied a suggestion that he with other KACC officers induced the accused to demand a bribe adding that he neither told PW2 that part of the trap money was not genuine nor that the same had been treated. He denied having hatched a plot to fix the accused saying that prior to arrest he did not know that accused.

PW5 was Senior Sergeant Robert Karani a KACC investigator who told the court how he treated with APQ powder the trap money after photocopying the same and appending his signature on the photocopy (P.Exh.10). He made an inventory of the fake money he issued out together with genuine currency produced as P.Exh.11. He also identified a half-cut envelop on which he put

his names and signature, date and time. He said he then handed over the money to Robert Birir (PW4)

PW6 Sgt. Salesio Kinyua Mugo an Investigator with KACC told the court how he was a team member of the group of PW4 and PW5. He saw PW2 being fitted with an audio – recording device. He said when the PW2 returned they listened to the taped conversation and established that there was a bribe demand of 5000/=. He told the court how he saw the PW2 re-fitted with the device and given 3000/= fake notes of money and 2000/= genuine money and told to go and meet the suspect. He added that he followed the PW2 to Kilgoris Law courts where after a while he saw the PW2 come out with a police inspector in official uniform that shortly thereafter he saw a prearranged signal from PW8 that the suspect had received the money. He told the court how he with PW8 entered the Kilgoris Law Courts which were in session and he informed orderlies therein that they wanted to arrest the accused. They then took out the accused.

He told the court that PW8 asked the accused to produce the money he had received but accused was reluctant and PW8 retrieved the money from accused's left hip pocket of his trousers.

He told the court that he swapped the hands of the accused with pieces of cotton wool after putting on gloves. He put the swaps in marked envelopes. He added that he also swapped a pen he recovered (P.Exh.14). He made an inventory of the money recovered from the accused (P.Exh.17) and accused wrote a comment on it to say no money had been recovered from him.

PW6 then told the court that he took the suspect with another witness up to Kericho Police Station where he recorded statements. Cross examined the witness denied changing the date of recovery from 16th to 15th August 2005. The court noted that the date was changed by superimposing 15th on 16th.

Perhaps by someone wishing to defeat the course and cause of justice as it is done with different ink marking. PW6 denied framing up the accused.

Pw7. Habil Aketch Omondi a government analyst told the court that on 19.8.2005 he received from PW.8

- a) Right hand swap
- b) Left hand swap
- c) Money swap
- d) Half – envelop
- e) Black pen
- f) Swap of black pen
- g) Blue khaki trousers
- h) Control APQ powder

He said he was asked to determine if the control APQ powder could be detected in items (a) through to (g). He stated that he found APQ powder on the right and left hand swaps (a&b), money swap (c), half envelop (d) and left side pocket of the trousers (g). He made his report and produced it as P.Exh.18.

Examined he said the APQ powder was not found in the pen and its swap (e & f)

He said he did the money swap himself and retained the swaps while releasing the money to the presenter.

PW8, Charles Selianto Samiji an Investigator with KACC told the court how he met PW2 at Integrity Centre when the PW2 complained that a court prosecutor was demanding a bribe of 10,000/= from him so as to terminate a criminal case before that court. He said PW2 had a bond in criminal case No. 645 of 2004 in that court. He took down PW1's statement. He told the

court how he traveled with PW5 and PW6 to Kilgoris on 15/8/2005 and met PW2 with whom they arranged to meet on 16/8/2005. He stated that on 16/8/2005 he in the presence of PW5 and PW6 met PW2 whom he instructed on how to use an audio – recording device and put in an audio – certificate. He said he needed a tape recording of the PW2 and the prosecutor to ascertain if there was a bribe demand from the prosecutor as alleged. He send PW2 off and surveilled him.

When PW2 returned he retrieved the recording gadgets from him and upon playing back established a bribe demand of Ksh.5,000/=. The complainant was then given some Ksh.5,000/= but Ksh.3,000/= of which was fake in a cut-off envelope. PW2 was then send off to meet the prosecutor as the witnesses surveilled him covertly.

PW8 said he positioned himself near the main entrance to the law courts. He told the court how after a while he saw the complainant Koech (PW2) emerge from the court room accompanied by an Inspector of Police and they were about seven metres from him. He said he saw Koech remove the money and handed over to the Police Inspector who received it in a hurry then put in his left pocket then returned into the court room. He told the court that it was then that he signaled his colleague Kinyua (PW6) and both entered the court where Kinyua alerted the court orderlies and escorted the accused Inspector out of the court room. Since the court was in session, he told the court that he recovered the money (Ksh.2,000/= genuine and Ksh.3,000/= fake) from the left hip trousers pocket of the accused (showing the P.exh. 13 and P.exh. 12)

He told the court how Kinyua (PW6) swapped the hands of the accused together with a pen he had.

He said he returned a half envelope produced as plaintiff exhibit 5 and a certificate of appointment produced as P.exh. 20 then

Led the accused to Kericho.

He told the court how he prepared an exhibit memo (P.exh. 21) to accompany the exhibits alongside APQ powder control sample (P.exh. 22) and later received a report (P.exh. 18) from the government analyst.

He said he also prepared a transcript of the taped conversation which was in a language he understood and did not receive the assistance of anybody. He said the bribe had been demanded in order to terminate a case before court wherein PW2 Mr. Koech had been charged.

Cross examined he told the court that the complainant PW2 was not told about the fake Ksh.3,000/=. He said the complainant was with him in Nairobi on 8.8.05 making his complaint.

He said he saw the accused receive the money from PW2 at Kilgoris court 7 metres from himself (PW8).

Put on his defence the accused man swore that he is an Inspector of Police formerly attached to Kilgoris law courts from May 2001 up to 16.8.05. He told the court that he knew the complainant herein (PW2) who was a suspect in Kilgoris SRM **Criminal case No. 645 of 2004** whose proceedings he produced as D.Exh. 2.

He told the court how on 3.8.06 PW2 failed to attend court for the hearing of his case at Kilgoris and a warrant of arrest was issued against him.

He told the court that PW2 turned up in court on 16.8.05 to inquire about a warrant of arrest issued against him.

He told the court how he then left the court for Kagwi hotel where in he was with a lady police officer called Stella when PW2 joined them and he asked him if he was still looking for Rotich (PW3). He said he had not asked for

any money from the PW2 at all and that he left PW2 at the hotel and returned to court.

The accused said ^{that} ~~what~~ P.exh.3 the transcript made by PW8 tallies as highlighted with what he told PW2 then and that it shows what was being talked of was not being taken to him.

Accused told the court that when he returned to court the PW2's file was called up and PW2 explained why he was not in court on 3.8.05 and the warrant of arrest against him was lifted. He said he did not know where the accused went to.

He said that earlier on 16.8.05 while in court with PW3, Mr. Rotich, told him to receive a "message" on his behalf from "Raila" the PW2 herein. He said when PW2 went to the court that morning, he (accused) asked Mr. Rotich's "message" but received none. He said while in court two strangers came in and asked him to see them so he obliged. He said the two men did not search him at Kilgoris law courts but told him he was under arrest. He mentioned that PW1 the magistrate went to the scene outside within 4 minutes to inquire what was up.

He said he was taken to Kericho CID office^S arriving there by 1pm where he was shown photocopies like P.Exh. 10 and some money to confirm as against the photocopy. He said he touched the money while comparing with the photocopy. He said it was then that Kinyua PW6 prepared an inventory which he signed saying no money was recovered from him (showing p.exh. 17). He said there were no writings below his signature then. He said the P.exh. 17 (inventory) does not tally with P.exh. 10 (photocopies of money). Accused said it was then that the KACC officers swapped his hands at Kericho police station for reasons he did not know.

He said his trousers were taken away ^{from} ~~from~~ him at Kericho CID offices ^S and he put on clothes brought in by friends who had followed him.

He denied being searched at Kilgoris court and found with Ksh.2,000/= and 3 papers. He denied beckoning PW2 to go with him outside the court ^{nor} that Pw2 gave him any money at all.

He raised the issue that the PW2 had a grudge against him for refusing to have the case against PW2 withdrawn at Kilgoris court by PW2's father.

He denied soliciting any money nor having powers to withdraw a criminal case in court. He produced some photocopies of money allegedly given to him by his counsel then on record Mr.Meroka – D.exh. 5 AB saying D.exh.5 does not tally with P.exh. 10.

He questioned the alteration on the date on P.exh.17 the inventory.

On cross examination the accused told the court that D.exh. 5 A & B are dated 15.8.05 while P.exh. 10 is dated 15.8.05 and signed.

He admitted asking that "Kitu" from Pw2 but insisted it was on behalf of Rotich.

He denied a suggestion that his uniform was taken while still in Kilgoris and not Kericho.

He said he had instructed an unnamed person to follow him with clothes.

DW2 Stephen Silei Ole Shira an Executive Assistant at Kilgoris law courts told the court that he had known the accused as their court prosecutor for close to 3 years.

He said he did not know of the PW2 upto the time the accused was arrested.

He denied ever referring PW2 to Mr. Rotich PW3 to take him (PW2) to the accused.

He said he was on leave when the accused was arrested and that he resumed duties on 6.9.05.

He denied meeting PW2 while he (DW2) was on his leave.

DW3 was Bernard Alfayo Sikolia a Higher Clerical Officer at Kilgoris law courts. He said he did not see PW2 at Kilgoris law courts on 3.8.05. He swore that on 16.8.05 he saw the PW2 ask the accused about a warrant of arrest against him saying PW2 had learnt of the warrant of arrest from a witness. The accused then referred PW2 to PW3 (Rotich).

Later PW2's case was dealt with and he left so DW3 says. He told the court how he saw two men enter the court. One of them asked him to tell the magistrate to adjourn and when he hesitated they told the accused to get out of the court room and accused obliged and that there was no commotion in the court room.

He said that when the accused talked with PW2 that day he did not hear of anything of money or "Kitu Kidogo" being mentioned. He said he had earlier on heard PW3 tell the accused he had a message for him (accused).

Submissions were made. I will consider the same. The burden of proving each count lies with the prosecution entirely.

In this matter the court will seek to know

- If the charge sheet is defective as submitted or not.
- If the offence took place within the jurisdiction of this court or not.
- Whether the accused person is employed by a public body or not.
- Whether indeed the accused corruptly agreed to receive a bribe.
- Whether indeed the accused received a bribe.
- Whether there was a basis for the alleged charges.
- Whether the witnesses who testified in court were credible or not.
- The import of the defence raised will also be considered.

On the issue of the charge sheet submitted by the defence to be defective the court was referred to the case of SELIMIA MBEU OWUOR & DANIEL NJUGUNA NJAGU VS. REPUBLIC

Nairobi Criminal appeal No. 68 of 1999 where their Lordships while considering section 322 (1) of the Penal ^{code} ruled that the use of the word "or" in that section meant that the prosecution has to be satisfied with choosing one of the offences and not lump them together. In the present case the accused is charged with the offence of "Corruptly agreeing to receive a sum of Ksh. 5,000/= in ^{Count} court 1 and "Corruptly receiving" the same in ^{Count} court II. Using the principal laid down by their Lordships in the above case of Selimia and another the prosecutor had to choose which "or" to follow.

The section 39 "(3) (a) of act number 3 of 2003 says

"A person is guilty of an offence if the person

(A).corruptly receives or solicits, or corruptly agrees to receive or Solicit, a benefit to which this section applies"

It would appear to me that the prosecution had to use the counts charged as alternatives. It was not done in this case. That

Defect, though is not fatal to the prosecution case hearing. The Court is still at liberty at this stage to reject one of the counts, Especially count 2 under section 89 (5) CPC for being a duplication of count 1.

We will now proceed on the basis of count one only.

The second issue I wish to consider is whether the offence took Place within the jurisdiction of this court.

Indeed the offence is alleged to have taken place at Kilgoris court Of Transmara District of the Rift valley province within the gazetted

Jurisdiction of this court.

This court was gazetted to handle cases under Act No. 3 of 2003

In April 2005 and again in March 2006.

For a charge like count 1 to be preferred it must be shown that the suspect is truly employed by a public body. In the present case the accused admitted in his defence that he is employed in the public service – the Police Department as a court prosecutor.

The prosecution confirmed this by producing the accused's certificates of employment dated 1.11.94 showing the force number of accused as F.NO. 217797 rank as I.P names as Joseph N. Mulewa.

It must also be shown that the accused "corruptly agreed to receive a sum of Ksh. 5,000/=.

Section 39 (3) (a) of Act No. 3 of 2003 makes it an offence for one to corruptly agree "to receive" benefit.

The accused told the court that what he asked the PW2 was a message for one Rotich (PW3). That means he had agreed to receive that "message" whatever was the message. When we turn to prosecution exhibit. 23 the transcript whose contents the accused admitted to have taken place we find the accused telling PW2 "Na si ulete hiyo tano basi..... kama mulielewana hivyo"

Translated to English is "Why don't you bring that five then If you (plural) had agreed that way".

That shows that the accused knew the message to be "five" and He agreed to receive the same on behalf of some one else.

I am aware of the Ruling in the case of OBANDA V.R (1983) klr 507 at 519 that tape recorded evidence acts as an aid Memoir or Notebook for the investigator on which he may rely when making

Charges. It was the tape recorded and transcript (plaintiff exhibit 20) that lay the basis for this charge before us. Now was the agreeing to receive by the accused done corruptly?

Looking at the conduct of the accused as deduced from the Transcript and the evidence of PW2 one can deduce that it was Corrupt.

He began by saying;

“ameniambia ile kitu ulikuwa umemletea ulete hapa”

Showing that they had agreed with someone that PW2 who was an accused person being prosecuted by himself (accused in Kilgoris criminal case number 645 of 2004 as shown by defence exh. 2) should bring them something.

That thing turned out to be money – benefit. That conduct of accused person agreeing to receive a benefit from a suspect he is Prosecuting is suspiciously corrupt conduct on the part of the accused. I am satisfied that the transcript shows that conduct to be corrupt. Was there a basis or an opportunity for a corrupt act to take place?

Yes there was. PW2 was facing a criminal case before the court in Kilgoris where the accused was a prosecutor. It only matured into the agreement to receive a bribe when the inclination shown by prosecution exhibit. 3 (transcript) On the side of the accused met that opportunity. It has been submitted that PW2 was an unreliable witness because he talked of a date of 31.8.05 being the day of the demand of a bribe yet he had earlier talked of 8.8.06 and 16.8.06. That, was not materially fatal to the prosecution case because PW2 proceeded to tell the court that he could not recall dates properly

prompting the court to ask about his level of education which he said was standard 4, in 1978.

There he was being sincere about his inability to recall dates properly given his low level of formal education. I have found all the prosecution witness except PW3 to be reliable and truthful. Nothing in their conduct or utterance before court made me think of them as people of unworthy of credit.

I single out PW3 for being unworthy of credit because he is one of the suspects in this matter. There were allegations that he may have pocketed Ksh.2,000/= when he filled in the bond/bail paper to release PW2 from custody. He was arrested alongside the accused and the accused has named him as the person who detailed him (accused)

to receive something from PW2).

PW3's testimony is that of an accomplice who will say anything to save his skin. It is unsafe to rely on his evidence and I decline to take anything he told the court as worthy of credit. I have also noted that PW6 was submitted to be unreliable for recording an inventory produced as P.exh. 17 a note of money as AA05020869 instead of AA0520869. But PW6 cured this by admitting in court that he erred in recording the figure.

In any case that part of the evidence relates to count 2 which I have rejected under **Section 89 (5) CPC and the Selimia & another** case cited above.

I will now turn to the defence. The defence needs only create a doubt over the prosecution case to get an acquittal.

Their burden of proof is not beyond a reasonable doubt and I will

not in any manner purport to expect the defence to the discharge a burden that is legally laid at the doorsteps of the prosecution. But the duty to be truthful lies on both the prosecution and the defence side.

The accused told the court that he was with one Stella a police officer at Kagwi hotel and that he left PW2 at that hotel said to be 70 metres away from Kilgoris court, yet he did not call that Stella to fortify his asssertion that he was only asking for a message on behalf of someone else. The accused also accepts the transcript (p.exh. 23) as tallying with what he told PW2 that day. The accused also talked of being swapped by his hands at Kericho Police station after he had touched some money from the prosecution witnesses. I dismiss that as an afterthought on the part of the accused because during cross examination none of the prosecution witnesses was confronted with such a question.

The accused also told the court that a friend he had called followed him all the way from Kilgoris with clothes. No such friend was called to support that kind of evidence – it is yet another afterthought.

The accused admitted asking to receive a “message” on behalf of Rotich (PW3) which message he said he did not know. That is unbelievable especially in view of what he told the PW2 in the transcript.

“Ni Change? Lete nikakuletee pande hii”

“If it is change? Bring it so that I get you from this side”

That truly shows that he was aware that he was receiving money.

One aspect raised by the accused in defence is that he had no powers to terminate a criminal case so he would not have agreed to accept a bribe but Section 50 (a) & (b) of Act No. 3 of 2003 takes away that kind of defence from him in these words: —
 “In a prosecution of an offence under this part that involves a benefit that is an inducement or reward for doing an act or making an omission, it shall be no defence.

- a) That the act or omission was not within a person’s power or that the person did not intend to do the act or make the omission or
- b) That the act or omission did not occur”

Turning to DW3 the court heard him say that on 16.8.2006 he heard PW2 telling the accused that a witness had told him about a warrant of arrest against him (PW2). That was done in the presence of the accused. That contradicts accused’s defence that PW2 told him (in the presence of DW3) that Rotich had told him (PW2) of the warrant of arrest while at Green Hotel. Would DW3 have missed those details while with the accused and listening to PW2? The answer is no. DW3 did not hear what accused said or he just came to support the accused outrightly to gain his freedom.

I wish to observe here that the cardinal principal in corruption cases relating to bribery is that a trap is only meant to create an opportunity for the suspect to commit the offence and not meant to push him to commit an offence.

In this case the conversation produced as P.Exh.23 shows a meeting of two minds who must have met earlier and the conversation flowed into the arena of bribery demand.

For the reasons I have given I dismiss the defence case as being unreasonable, unreliable and mainly an afterthought concocted by the accused and his witnesses to save the skin of the accused.

I find the prosecution case proven beyond a reasonable doubt and find the accused guilty and convict ~~on~~^{on} him count I as charged.

J.K NGENO

PM

5/9/2006

This judgment has been read in open court this 5/9/2006 in the presence of the accused, Mr. Ogutu for accused, I.P Ogada prosecuting and court clerk Koech.

J.K NG'ENO

PM

5/9/2006

Prosecution

No records have been received. The accused be treated as a first offender.

J.K NG'ENO

PM

5/9/2006

Ogutu – we wish to mitigate by saying that the offence on which the accused has been convicted is ^a serious one. The penalty is in section 48 (1) (a) of Act number 3 of 2003 but we note the circumstances in which the offence took place. We ask the court to exercise mercy and leniency on the accused.

The accused is married with children of tender age and going to school. They rely on the accused for their upkeep, accommodation and schooling. We pray ~~that~~ ^{for} a non-custodial sentence, preferably probation which would have the net effect of rehabilitating the accused person. The accused is remorseful and regrets the incident that led to the present charge. The accused pleads and kneels for mercy.

J.K NG'ENO

PM

5/9/2006

Court- I have noted the mitigating factors. I am also aware of the penalty given by section 48 of Act number 3 of 2003 – they are heavy penalties. The legislature in its wisdom must have intended that the offences of corruption be made so expensive as to deter would-be offenders and those offending. The court takes exception to the fact that the accused used a house of justice as a market place and indulged in a corrupt act.

That gives the police force and the judiciary an obnoxious ^{ly} bad reputation. I will therefore go for a punitive sentence.

On count 1 I sentence the accused person to serve 4 years imprisonment.

Since there was no benefit.

I impose no mandatory fine.

Right of appeal 14 days.

J.K NGENO

PM

5/9/2006

Ogutu – we pray that the cash bail be released to the accused person.

We also pray that we be supplied with certified copies of the proceedings and judgment of this court at his costs.

J.K NG'ENO

PM

5/9/2006

Court – cash bail deposited in court be released to the accused. Proceedings and judgment be availed. The defence upon payment of requisite fee.

J.K NGENO

PM

5/9/2006

The Ksh.2,000/= genuine money and Ksh.3,000/= fake produced as prosecution exhibit 7 be released to KACC.

All releases to take place after 14 days from today's date.

J.K NGENO

PM

5/9/2006

Release of Exhibits.

I order the following exhibits released in this manner.

- Pen produced as prosecution exhibit 14 be released to the convicted person.
- Tape recorder produced as Prosecution exhibit 2 be released to KACC (already released to prosecution witness 7.
- Micro phone produced as Prosecution exhibit 3 be released o KACC (already released)
- Trousers produced as prosecution exhibit 6 be released to the Commissioner of Police it being ~~the~~ police property. _____
- The certificate of appointment produced as plaintiff exhibit 20 be released to the Commissioner of Police.

