



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**HIGH COURT CRIMINAL APPEAL NO. 129 OF 2016**

**ALICE NJOKI MUNGAI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the Judgment delivered on 13<sup>th</sup> August, 2015 by Hon. L. Komingoi (Chief Magistrate) Chief Magistrate's Courts at Thika in Criminal Case No. 116 of 2014).**

**JUDGMENT**

1. The Appellant, Alice Njoki Mungai was charged together with others as follows:

**Count I: the offence of abducting with intent to confine contrary to Section 259 of the Penal Code.**

**The particulars of the offence being that on the 7<sup>th</sup> day of January, in Muranga country within the Republic of Kenya jointly with others not before court, with intent to cause F J N to be secretly and wrongfully confined, abducted the said F J N.**

2. **Count II: Stealing by servant Criminal Section 281 of the Penal Code.**

**The particulars of the offence being that on the 7<sup>th</sup> day of January 2014 in Muranga county being a servant to S W M stole one Ipad, one Laptop, Computer, one Nokia mobile phone make 2730 and one DSTV decoder all valued at Ksh.100,000/= the property of S W M which came into her possession by virtue of employment.**

3. **Alternative charge: Handling stolen goods contrary to Section 322 (1)(2) of the Penal Code.**

**On the 7<sup>th</sup> day of January 2014 in Muranga county, otherwise than in the cause of stealing, were found with one Ipad, one Laptop, one Nokia mobile phone make 2730 and one DSTV Decoder, all valued at Ksh.100,000/= the property of S W M Knowing or having reasons to believe them to be stolen goods.**

4. The prosecution case was that PW1 L C M and his wife PW2 S W M were parents of two children. Both PW1 and PW2 were at work on the material day and took their first born child to school. The second child, 1½ year old F J N was left at home with the house help, the Appellant herein had recently been recruited from a bureau. There was also a carpenter carrying out some repairs in the house.

5. The carpenter later telephoned PW1 & PW2 and informed them that the househelp had left with the baby. PW1 and PW2 returned home and confirmed that the househelp and the baby were nowhere to be seen. The items mentioned in the charge sheet were also missing from their house.

6. A report was made at Thika Police Station. The Appellant was tracked by police officers in Kabati area through the telephone line she was using and arrested together with two other women. The baby and the stolen goods were recovered. The Appellant and 2 others were subsequently charged with the offence herein.

7. In her defence case the Appellant gave unsworn evidence. The Appellant stated that the mother of the child who was her employer had telephoned her and asked her to meet her in Thika town. That she went with the child but when she telephoned the employer she did not answer. That she stayed at the bus stage upto 8 p.m. then decided to look for a place to rest. She then went to Kabati estate. That thereafter she telephoned her employer from there. That later she was arrested with the child and was subsequently arraigned in court. The Appellant denied having committed the offence herein.

8. The Appellant was found guilty in both count I & II and convicted accordingly. The Appellant was sentenced to 5 years imprisonment in

each count. The sentence runs concurrently.

9. The Appellant was dissatisfied with both the conviction and sentence and appealed to this court. The Appellant stated that she is a first offender and is deeply remorseful. She asked for leniency and stated that her defence and mitigation were ignored by the trial magistrate. She further stated that she is now reformed and has come to know God.

10. The appeal is opposed. The learned counsel for the state supported both the conviction and sentence.

11. This being a first appeal, this court is duty bound to re-evaluate the evidence and the record afresh and come to its own conclusions and inferences – See **Okeno v Republic (1972) EA 32**.

12. The evidence of PW1 and PW2 is corroborative. Their evidence reflects that they left the baby with the Appellant who disappeared with the baby and their goods. The evidence of PW3 the carpenter is that of an eye witness who saw the Appellant leaving the house with the baby and a paper bag.

13. Both PW1 and PW2 further confirmed that their baby and the goods listed in the charge were recovered from the Appellant in Kabati area. PW1 and PW2 identified the said properties. PW4 Jason Gathika Macharia & PW 5 Job Kamau who deal with electronic goods in Kabati town respectively testified on the recovery of the Laptop and the Ipad. It was further the evidence of PW5 that the Appellant was the one who had left the Ipad with him.

14. PW6 Cpl Geoffrey Mwirigi in his evidence confirmed the report and the subsequent arrest of the Appellant. According to PW6, it was the Appellant who lead him and police officers to the shop where the Ipad was recovered and to the place where the laptop was recovered.

15. The evidence of the prosecution witnesses establishes that the Appellant was found with the baby in Kabati and lead to the recovery of the stolen goods. In deed the Appellant does not deny that. What the Appellant has stated in her defence amounts to a defence of frame up by her employer. There are however no reasons that emerge from the record why the employer would frame her up.

16. In the upshot, I am satisfied that the prosecution case was proved against the Appellant beyond any reasonable doubts. The sentence meted out is lenient taking the account the seriousness of the offence. I find no merits in the appeal and I hereby dismiss the same.

**Dated, signed and delivered at Kiambu this 22<sup>nd</sup> day of June, 2018**

**B. THURANIRA JADEN**

**JUDGE**