Mwaniki v Republic (Criminal Appeal E002 of 2022)
[2025] KEHC 16712 (KLR) (14 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16712 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL APPEAL E002 OF 2022

EN MAINA, J

NOVEMBER 14, 2025

BETWEEN

JAMES NYAGA MWANIKI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal against the judgment by Hon.E.H Keago(CM) in Machakos Criminal case EACC No 2 of 2016 in Cr. No. E520 of 2022 Delivered on 22nd March , 2021)

JUDGMENT

1. The Appellant herein James Nyaga Mwaniki was charged with an offence of dealing with suspect property contrary to section 47 (2) (a) as read with section 48(1) of the Anti- Corruption and Economic Crimes Act No 3 of 2003.

2. The particulars of the offence being that on 5th day of February 2016 at around 7.30 am at Kamburu Road block within Machakos County being employed by a public body to wit, National police Service as a police constable attached to Masinga Police Post used your office to improperly confer yourself a benefit of kshs 150 from various motorists as an inducement not to charge the said motorist with unspecified offences.

3. On Count II the accused James Nyaga Mwaniki was charged with the offence of abuse of office contrary to Section 46 as read with section 48(1) of the Anti- Corruption and Economic Crimes Act No. 3 of 2003.

4. The particulars of the offence being that on 5th day of February 2016 at around 7.30 am at Kamburu Road block within Machakos County being employed by a public body to wit, National police Service as a police constable attached to Masinga Police Post used your office to improperly confer yourself a benefit of kshs 150 from various motorists as an inducement not to charge the said motorist with unspecified offences.

5. After hearing and analyzing the testimonies of the eight prosecution witnesses and also the testimony of the appellant, the trial Magistrate found the appellant guilty on the offence on both counts and sentenced to pay a fine of kshs 50,000 for each count in default serve 12 months imprisonment

6. Aggrieved by the Judgment the appellant preferred this appeal which according to the Petition is premised on the following grounds;

> " 1) The Learned trial magistrate erred in law and facts by convicting the appellant on inconsistent and contradictory statements
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> 2. The learned Trial magistrate erred in law and in fact by overlooking the fact that the evidence relied on was not watertight to justify a conviction
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> 3. The Learned trial magistrate erred in law and in fact when he shifted the burden to the appellant.
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> 4. The Learned trial magistrate erred in law and fact by convicting the appellant on a failure to call a crucial witness.
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> 5. The learned Trial magistrate erred in law and in fact when he dismissed the appellant's defence.
>
> 6. The learned magistrate erred in law and in fact by imposing an excessive sentence despite the appellant herein being a first offender.

7. The Appeal was canvassed by way of written submissions.

8. The Appellant submitted that that there were inconsistencies and contradictions which were substantial and fundamental to the main issue in question and that the evidence of the witnesses especially PW3, PW4, PW5 and PW6 was not watertight to warrant a conviction.

9. The Appellant also submitted that his defence was credible and the same ought to have been given a benefit of doubt.

10. The appellant contended that the prosecution never proved their case beyond reasonable doubt against the appellant. He urged the court to allow the appeal and quash the sentence.

11. For the Respondent it was submitted that the prosecution discharged its burden of proving the offence beyond reasonable doubt.

12. It was submitted that the evidence of PW1, PW3, PW6 and PW8 was consistent and supports the charges against the appellant and that the inconsistency highlighted by the appellant does not displace the cogent evidence by the prosecution.

13. The respondent also submitted that failure to call some witnesses did not weaken the prosecution's case since the witnesses that testified had no personal interest in the matter as did the appellant's colleagues who may have incriminated themselves or the PSV drivers who were informers

14. It is finally submitted thatthat the prosecution established that the appellant was a civil servant and he abused his office by corruptly receiving a benefit and thus urgedthe court to uphold the conviction and the sentence imposed by the trial court.

Determination

15. I have considered the Appeal, the Trial Court record and the submissions of parties on record.

16. This is a first Appeal and in the case of Okeno v Republic [1972] EA 32 the court stated:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the Trial Court has had the advantage of hearing and seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424."

17. It is trite that all criminal offences require proof beyond reasonable doubt. Lord Denning in Miller vs. Ministry of Pensions (1947) 2 All ER, 372 stated as follows:

> " That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice."

18. The Appellant had been charged with the offence of dealing with suspect property contrary to section 47(2) (a) as read with section 48(1) of the *Anti-corruption and Economic Crimes Act* No 3 of 2003 and on count ii he was charged with an abuse of office contrary to section 46 as read with section 48(1) of the *Anti-Corruption and Economic Crimes Act* No 3 of 2003. According to the Trial Magistrate, the Prosecution proved the case beyond reasonable doubt.

19. Based on the grounds of appeal, the issues that emerge for determination are as follows:-

Whether the Prosecution proved the offences to the required standard

Whether the Trial Court sentence failed to commensurate the offence charged.

20. Section 47 of ACECA creates an offence known as dealing with suspect property and it provides as follows;

> " 47(1) A person who deals with property that he believes or has reason to believe was acquired in the course of or as a result of corrupt conduct is guilty of an offence.
>
> (2) For the purposes of this section, a person deals with property if the person—
>
> (a) holds, receives, conceals or uses the property or causes the property to be used; or
>
> (b) enters into a transaction in relation to the property or causes such a transaction to be entered into.
>
> (3) In this section, "corrupt conduct" means—
>
> (a) conduct constituting corruption or economic crime; or

(b) conduct that took place before this Act came into operation and which—

(i) at the time, constituted an offence; and

(ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime."

21. In order to prove the offence under section 47 of ACECA, the prosecution must establish, "the dealing" as provided in section 47(2) thereof and the belief by the accused that the property was acquired in the course of or as a result of corrupt conduct. The first element is easy to prove but the second requires that the, "corrupt conduct" as defined under section 47(3)(a) of the Act be proved.

22. It was therefore the duty of the prosecution to adduce evidence to show how through his conduct the appellant was in constructive possession of the suspect property. In the case of Republic –vs- Alfred Mureithi & Another [2018] eKLR Majanja J. stated thus:

> "In order to prove, belief that property was acquired in the course of or as a result of corrupt conduct, the prosecution must establish the underlying conduct that constituting corruption or economic crime which can be imputed to the accused? .... In Khalif Haret –vs- Republic Nairobi HCCRA no. 1 of 1979 [1979] eKLR, the court held that the conviction for handling stolen goods could not be upheld unless the goods in question were proved to have been stolen.

23. The testimony of the prosecution witnesses was that they received a tip off that there were police officers who was receiving bribes at a road block in Kamburu and on searching them kshs 900 was found with a accused: 6 of kshs 50 each, 4 of 100 each and 1 note of kshs 200, the accused was later arrested and the road block disbanded.

24. The accused in his defence testified that he had kshs 750 for his lunch and could not tell where the officer got the rest of the money from.

25. From the testimonies of the witnesses PW1,PW2, PW3, PW4, PW5 and PW6 it was evident that the money kshs 900 was recovered. An inventory was prepared which he signed. PW8 the investigation officer conducted surveillance of the police officers which surveillance placed the accused at the scene together with others and were seen receiving something from motorist. The accused admitted to having kshs 750 but could not account for the Kshs 150 found with him. This establishes the element of dealing with suspect property. I am convinced that the prosecution proved beyond reasonable doubt that the accused committed the offence.

26. On sentence I find no fault with the trial court's sentence as it took into account the mitigating factors by the appellant and gave a sentence proportionate in the circumstances.

Disposition

1. This appeal thus fails and is hereby dismissed.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 14th DAY OF NOVEMBER 2025.

E N MAINA

JUDGE

In Presence Of:

Mr. Langalanga for the Appellant

Ms Nyauncho for the state

C/A: Geoffrey