

1. Mr. Mwanyikira Mwadume was charged with the offence of theft by servant contrary to Section 28 of the Penal Code (Cap. 63 of the Laws of Kenya). He was tried and convicted of the offence and sentenced accordingly. The typed and certified proceedings read as follows:

13th December, 2009

Coram
 Before the Honourable Matata SRM
 Accused present (in person)
 Prosecutor Present – Ndume
 Court Clerk Ms Chapa

The substance of the charge was read to him (the accused person).

Accused Person: I did not steal the computer. I bought it from an office auction conducted on 10th December, 2009

Court: plea of Not Guilty Entered
 Hearing to proceed on 16th December, 2009 before this court

Accused: I wish to apply for cash bail, witness statements of all prosecution witnesses and copies of prosecution exhibits

Prosecutor: I have nothing to say in response to the application

Court: Cash bail of Kshs.50, 000 granted, prosecution to supply defense with all the documents they intend to rely on at the trial together with witness statements.

Signed by Hon. Matata:
 13.12.2009

Coram
 Hon Matata
 Accused present (in person)
 Prosecutor present (Ndume)
 Court Clerk (Aisha)

Prosecutor: I am ready to proceed, I have two witnesses.

Accused: I am not ready to proceed. I do not have any good reason but I just do not feel like proceeding with this matter today.

Court: Matter to proceed at 11.00 a.m.

At 11.00 a.m.

Prosecutor: your honour I am ready to proceed.

PW1 I am Mr. Mutesi Marijuana. I remember very well on 10th December, 2009. I was on duty at Papa Ltd offices in Industrial area along Enterprise Road Nairobi discharging my duties as a guard. It was at about 4.30 p.m. when the accused person, Mr. Mwadume, left the office complex and walked towards the gate. He was carrying a brown bag. I was suspicious of the contents of the said bag and I immediately caused him to avail it to me for a random inspection. He initially resisted to submit to the proposed inspection but he eventually agreed. On searching the bag, I came across a computer. I retrieved the computer and then arrested him. I took him to the Managing Director's office and handed him over to the Managing Director of Papa Ltd. I also left the computer in the Managing Director's office. I have since not seen the material computer. That is all I have to say.

Signed by Hon. Matata
16.12.2009

Cross examination of PW1 by Accused:

I do know you very well. The computer the subject of the charges is not in court.

Signed by Hon. Matata
16.12.2009

Prosecutor: I have no re-examination

PW2 I am Police constable S.K. Waweru force number 102010 based at Industrial Area Police Station. Yes I remember on 10.12.2009 at about 1.00 p.m. I was manning the report desk at the Dudu Police Station when the accused person was brought to the station for having been found in possession of a computer reportedly stolen from his employer. He was brought by the Managing Director of Papa Ltd one Mr. Gabi Mwash. I immediately rearrested him prepared the present charges facing him and brought him to court. That is all.

Signed by Hon. Matata
16.12.2009

RULING

I have evaluated the evidence on record; my conclusion is that the accused person has a case to answer. Defence hearing to take place on 04.01.2010

Signed by Hon. Matata
16.12.2009