



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 72 OF 2019**

**(From original conviction and sentence in Mumias PMCCRC No. 746 of 2017, Hon. TA Odera,**

**Senior Principal Magistrate, of 12<sup>th</sup> June 2019)**

**GAMALIEL LUKOSE NABUKA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The appellant herein had been charged before the primary court of seven counts of making a document without authority, personation, conspiracy to defraud, forgery, uttering a forged document and obtaining money by false pretences. A trial was conducted, where nine witnesses testified, the appellant was put on his defence, and was eventually convicted on all seven counts.

2. He was aggrieved by the verdict, hence the instant appeal. He has listed seven grounds in his petition of appeal. He has placed on record two petitions of appeal. The one filed on 22<sup>nd</sup> June 2019 raises three grounds, that the discretionary power at sentencing was not exercised properly, the sentences imposed were harsh, his mitigation was not considered and the fact that he was a first offender and remorseful were not considered. The supplementary petition of appeal raises six grounds: that he had pleaded not guilty; the plea was taken on the same day with a plea in another case he also faced; failure to consolidate both cases; the sentences imposed were excessive; mitigation was not considered; his defence was not considered; and the evidence was flimsy, disjointed, malicious, fabricated, uncorroborated and doubtful.

3. Directions were taken 30<sup>th</sup> October 2019, before the Deputy Registrar, for disposal of the appeal by way of written submissions. I doubt whether the Deputy Registrar of the court has jurisdiction to give such directions, or to give any directions on how an appeal is to be canvassed. Nevertheless, both sides acquiesced to those directions, saying that they would file written submissions. However, they kept flip-flopping. On 11<sup>th</sup> November 2019, the appellant said that he needed time to file written submissions. On 11<sup>th</sup> December 2019, he said that his submissions were ready. On 20<sup>th</sup> February 2020, he said he would not be filing written submissions but would rely on the grounds of appeal. The appellant placed on record a document headed "submission," dated 10<sup>th</sup> December 2019. In the same he states that he appeals only on sentence, on the grounds set out in his petitions of appeal. The respondent did not file any submissions.

4. The appeal turns only on the sentence, going by the submissions filed by the appellant. The sentencing hearing was conducted on 13<sup>th</sup> June 2019 and 19<sup>th</sup> June 2019. The appellant mitigated on 13<sup>th</sup> June 2019. He said that he was a family man, with school going children. He also pointed out that he had been in remand for twenty-two months. The court called for a pre-sentence report, and one was tabled on 19<sup>th</sup> June 2019. The trial court found that the report was not favourable to the appellant, for it said that he was negative to the community and the local administration. The court expressed itself to have taken into account the prevalence of the offences that the appellant faced in the jurisdiction, as well as the time spent by the appellant in custody, before pronouncing sentence.

5. Looking globally at the sentencing hearing, and the factors that the trial court took into account at sentencing, I am not persuaded that the court in any way fell into error, or that it exercised its discretion improperly or in a capricious or abusive way. The appellant mitigated, and I note that the trial court, in the sentencing ruling of 19<sup>th</sup> June 2020, did take into account a section of the mitigation, the period that the appellant said he had spent in custody. The court did not refer to the portion about his being a family man with school going children. However, I find that that of itself is not sufficient to disturb the sentences imposed. It is significant that the appellant did not express any remorse.

6. I find no merit in the appeal herein, and I hereby dismiss it. The consequence is that the sentences imposed by the trial court are hereby confirmed. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18TH DAY OF FEBRUARY , 2022**

**W MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Gamaliel Lukose Nabuko, appellant, in person.**

**Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.**