

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO.EO21 OF 2021

ROBERT OCHIENG OMALA ...APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

[1] The appellant, **Robert Ochieng Omala**, appeared before the Chief Magistrate at Busia facing a charge of being in possession of forged bank notes, contrary to s.359 of the **Penal Code**. It was alleged that on the 2nd October 2019, at Funyula Trading Centre in Samia Busia County without lawful authority or excuse had in his possession eighteen (18) pieces of ksh.1000/= thirteen (13) pieces of ksh.500/= and thirty seven (37) pieces of ksh.200/= forged currency knowing them to be forged.

[2] After a full trial, the appellant was convicted and sentenced to serve three (3) years imprisonment. He was however, dissatisfied with the decision of the trial court and preferred the present appeal on the basis of the grounds in his own petition of appeal dated 19th August 2021 and that of his advocates, **Nandwa & Co. Advocates**, dated 20th August 2021. The appeal was opposed by the state/respondent through the learned Prosecution Counsel, **Mr. Mayaba**. The learned defence counsel, **Mr. Iddi**, appeared for the appellant at the hearing of the appeal which proceeded by way of written submissions.

[3] Having given due consideration to the appeal and its supporting grounds and those in opposition thereto together with the rival submissions, the duty of this court was to revisit the evidence availed at the trial and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (see, **Okeno vs. Rep (1972) EA 32**).

[4] Briefly, the prosecution case was that police officers attached to the Directorate of Criminal Investigations (**DCI**), **Sgt Justine Nguthu (PW 1)** and **Cpl Paul Ngesa (PW 2)** received a report that the appellant was in possession of fake money which he was using to purchase maize. The officers swung into action and arrested the appellant while in possession of fake money, to wit, eighteen notes of ksh.1000/=, thirteen notes of ksh.500/= and thirty seven notes of ksh.200/= (**P.Ex 1,2 & 3**).

[5] The recovered currency notes were forwarded to a forensic document examiner for necessary analysis. Thereafter, the necessary report (**P.Ex 5**) was compiled. It showed that the notes were counterfeits of ksh.1000/=, ksh.500/= and ksh.200/=. The appellant was then charged with the present offence which he denied.

[6] In his defence, the appellant merely indicated that the money which was in his possession was not the money which was exhibited in court. The trial court after considering the evidence in its totality concluded that the charge had been proved against the appellant beyond reasonable doubt. Accordingly, the appellant was convicted thereof and sentenced to a term of imprisonment.

[7] In this court's opinion, the evidence raised no dispute with regard to possession of the fake currency notes by the appellant. Indeed, the appellant's defence was more of an admission than a denial. However, he did imply that the notes produced in court were not those found in his possession. This was a fake defence if not a "**red hearing**" given that he signed the necessary inventory (**P.Ex 6**) and never objected to the production of the notes in court as exhibits.

[8] The appellant's conviction by the trial court was therefore sound and proper and the three years imprisonment sentence meted upon him was lawful as the offence carried with it a maximum sentence of seven years imprisonment.

[9] All the foregoing observations and findings clearly indicate that all the appellant's grounds of appeal are devoid of merit and are hereby overruled.

With regard to the language used during the trial, the record shows that the appellant used the Kiswahili language which he clearly understood and never raised any objection to its usage.

[10] In sum, this appeal is hereby dismissed in its entirety with the result that both conviction and sentence of the appellant by the trial court are upheld.

J.R. KARANJAH

J U D G E

[DELIVERED & SIGNED THIS 21ST DAY OF OCTOBER 2021]