



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 3 OF 2020**

**STEPHEN ONYANGO ODHIAMBO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From the original conviction and sentence in Criminal case No. 2184 of 2016 of the Chief Magistrate's Court at Busia by Hon. R. N. Ng'ang'a-Resident Magistrate)*

**JUDGMENT**

1. Stephen Onyango Odhiambo, the appellant herein, was convicted in three counts. In count two he was charged with an offence of forgery contrary to section 350 of the Penal Code, in count three the offence was uttering a false document contrary to section 353 of the Penal Code, while in count four, the offence was obtaining money by false pretence contrary to section 313 of the Penal Code.

2. The particulars of the offences were that on 24<sup>th</sup> April 2014 at Busia township, in Busia County with intent to defraud forged a Rental Tenancy Agreement purporting it to be a genuine Rental Tenancy agreement between Steven Onyango Odhiambo and Samuel Muhokho Namenge. He subsequently uttered the false document on 30<sup>th</sup> April 2016. On the same day, he obtained Kshs. 213,000/= from Eliakim Okoth pretending that he would rent to him a house at Busia Municipality plot No. 42, a fact he knew was not true.

3. The appellant was sentenced as follows:

In count two, to pay a fine of Kshs. 50,000/= or in default to serve six (6) months imprisonment In count three he was sentenced to pay a fine of Kshs. 50,000/=or in default to serve six(6) months imprisonment, while in count four (4) the fine was Kshs.100,000/= or in default to serve one year imprisonment. This is the sentence he is challenging.

4. An appellate court would only interfere with the sentence of trial court where some sufficient circumstances exist. These circumstances were spelled out in the case of in the case of **Nelson vs. Republic [1970] E.A. 599** as follows:

**The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewcity (1912) C.CA 28 T.LR 364.**

5. In the instant case the learned trial magistrate imposed very lenient sentences for the offences. I have no reason to interfere with the same.

From the foregoing analysis, I find that the appeal lacks merit and the same is dismissed.

**DELIVERED and SIGNED at BUSIA this 25<sup>th</sup> Day of June, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**