



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

HIGH COURT CRIMINAL APPEAL NO. 29 OF 2019

MAUREEN IMINZA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant **MAUREEN IMINZA** was convicted on a charge of possessing paper or implements of forgery Contrary to Section 367 (a) of the Penal Code. Upon her own plea of guilty, she was sentenced to serve six (6) years imprisonment. The particulars of the charge stated that on 28th January, 2019 at **KIBWARENG** Location within Nandi County, she jointly with another without lawful excuse or authority used a paper intended to resemble and pass as a special paper such as provided and used in making currency notes.

The facts were that the Appellant and another were moving from shop to shop on a Motor Cycle within **KIBWARENG** Locality with fake currencies which they were using to make purchases of goods in small quantities so as to get genuine currency. The fake currencies were in the denomination of 1000/=. They made purchases from two shops without suspicion but upon getting to the 3rd shop, the shopkeeper realized the pair had fake currency notes and raised an alarm. The Appellant and her companion who was riding the Motor Cycle, took off and a chase led to their apprehension in **KEMELOI** Location (some distance from the scene of crime). A total of fake Kshs.3000/= was recovered from them, and a further search led to recovery of Kshs.7,000/= from the Appellant which had hidden the same in the body of her chased. In total they had fake Kshs.10,000/= currency with which were produced as Exhibits.

The Appellant had also made purchases of braids, Pampers Diapers, Cooking Oil, Beans, Sugar, Rice and Milk.

In Mitigation, she said she had a child and was an orphan. The recovered Milk was returned to the owners. The prosecution cautioned that the case emanated from **KOBUJOI** where a similar incident had been reported and it seemed the scam had a network.

The Trial Court called for a Probation Officer's Report which indicated the Appellant was remorseful and had two young children and urged for leniency.

However, what irked the Court was the Appellant's attitude – that having admitted the charge in Court and to the Probation Officer, when it came to sentence, she turned around to say she did not know the currency was fake.

The Trial Magistrate noted that fake currency exchanged sabotages the County's economy and was an economic crime. She was then sentenced to 6 years imprisonment.

She now appeals on grounds that she had pleaded not guilty to the charge and the proceedings should be declared a nulling.

In the written submissions, the Appellant's Counsel **MR. CHITWA** urges that the plea was not unequivocal.

The issue here is very simple, the Appellant confirmed to the Trial Court that the facts as narrated were correct, but just before sentence when asked to mitigate, she said she did not know that the currencies were fake. The locus classicus on plea in Criminal Cases is the case of **ADAN -V- R (1973) E.A. 445 AT 446** of an Accused does not agree with the statement of facts in totality of the circumstances, that a Court must enter a plea of not guilty. I recognize that the Trial Court had already entered a conviction, but before sentence, the Appellant appeared to dispute the facts.

The **DPP rep C.Ms BUSIENEI** in conceding, the Appeal submits that the procedure as set out in **ADAN -V- R** was followed, but the Appellant's mitigation contested the critical fact of whether she knew that the currencies were fake and a plea of **NOT GUILTY** ought to

have been entered.

I am in total agreement and need not add another line to this.

The Trial Magistrate ought to have entered a plea of **NOT GUILTY** and not engage in arguing that the Appellant had departed from her earlier stand in Court and to the Probation Officer.

The conviction was improper and is quashed in the sentence and is set aside.

Appellant has served 8 months out of a 6 year sentence and in progress as the offence carries a maximum sentence of 7 years. I find it prudent, considering the nature of the offence to order that the matter goes for **RE-TRIAL** before a Magistrate other than the one who heard and convicted her. She will appear before **Senior Principal Magistrate, Kapsabet on 4th December, 2019** for plea taking and trial direction.

Delivered and dated this 28TH day of November 2019 at ELDORET.

H. A. OMONDI

JUDGE