



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 6 OF 2017

(Being an appeal arising from Ruling in Kitale Chief Magistrate's court criminal case No. 3450 of 2015 delivered by P.C. Biwott Senior Principal Magistrate on 25/1/2017)

REPUBLIC.....RESPONDENT

VERSUS

ALBERT BUNYASIAPPELLANT

J U D G M E N T

1. The Appellant has appealed against the decision of Honourable P.C. Biwott dated 25th January 2017 in which he found that the Respondent had no case to answer over the 4 counts of offence he had been charged with. The said counts were;

The first count was **engaging in private medical laboratories practice where he is employed by the Government of Kenya contrary to part IV Section 20(2) (b) (1) as read with Section 20(3) of the Medical Laboratory Technician and Technologies Act No. 10 of 1999 Cap 253 (A) Laws of Kenya.** The particulars were that **on 29th June 2015, at Selmus Laboratory Services in Kitale town within Trans Nzoia County being an employee of Government of Kenya under the Ministry of Health was found to have engaged in private Medical laboratory practice as a proprietor of Selmus Laboratory Services.**

2. The second count was **stocking and using unvalidated laboratory Reagents contrary to Part iv Section 25(2) (a) of the medical Laboratory Technicians and Technologies Act No. 10 of 1999 Cap 253 (A) Laws of Kenya.** The particulars of the charge were that **on the 29th day of June 2015 at Selmus Laboratory Services in Kitale town within Trans Nzoia County was found stocking and using unvalidated medial laboratory reagents Malaria Strips, field stain B, Leishman, Assorted reagents that include blood glucose strip, brucella abortus and brucella meliteniss, anti -A anti-D, RF latex reagents.**

3. The third count was **employing unregistered Medical Laboratory Technician/Technologist contrary to Part III Section 19 (3) of the Medical Laboratory Technicians and Technologists Act No. 10 of 1999 Cap 253 (A) Laws of Kenya.** The particulars were that **on the 29th day of June 2015 at Selmus Laboratory Services in Kitale town within Trans Nzoia County employed one Silas Biwott who is not registered under Medical Laboratory Technicians and Technologists Act to operate in the laboratory at his Selmus Laboratory Services.**

4. The fourth count was **Operating an Unregistered Medical Laboratory contrary to Section 20 (1) (b) (c) Section 20 (3) of medical laboratory Technicians and Technologists Act No. 10 of 1999 Cap 253(A) Laws of Kenya.** The particulars of the charge were that **on the 29th June 2015 at Selmus Laboratory Services, his servant Silas Biwott was found practicing in an unregistered medical laboratory.**

5. This court has extensively perused the proceedings at the trial court as well as the strong submissions by both the counsels on record.

6. Without going into the merit or demerit of the evidence placed on record by the prosecution, I am of the considered opinion that the honourable trial magistrate did not consider germane issues raised by the prosecution against the appellant.

7. Without saying much, I shall allow the appeal, set aside the said ruling dated 25/1/2017 and order that the Respondent be put on his defence before another court other than honourable P.C. Biwott. The matter is remitted to the Chief Magistrate's court for further directions on which court should handle.

Delivered, signed and dated at Kitale this 26th day of September , 2018.

H.K. CHEMITEI

JUDGE

26/09/18

In the presence of:

Mr Kakoi for the State

Nyamu Advocate for the Respondent

Respondent - Absent

Court Assistant – Kirong

Judgment read in open court.