



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 32 OF 2014

(Being an Appeal from the Judgment of the Kitale Ag Senior Resident Magistrate delivered on 28th February 2014 in Criminal case No. 2553 of 2012)

REPUBLIC.....APPELLANT

VERSUS

FAHRAN MOHAMMED YUSUF.....RESPONDENT

J U D G M E N T

1. The appellant is the state. The Respondent **FARAHAN MOHAMED YUSUF** was charged in Count 1 with the offence of making a document without authority contrary to section 357(a) of the Penal Code.

The particulars of the offence are that on the 14th day of May 2010 at unknown place within Trans Nzoia county with intent to defraud without lawful authority made a letter of the Chief of Kitale Municipality.

2. In count II, the appellant was charged with the offence of Uttering a document with intent to deceive contrary to section 357 (b) of the Penal code.

The particulars of the offence are that on the 18th day of may 2010 at **Kitale Law Courts High Court Civil Registry** in **Tans Nzoia County**, with intent to deceive, knowingly uttered a letter of the Chief of Kitale Municipality which had been made without lawful authority to Isaac Magesa.

3. The prosecution called eight (8) witnesses in support of their case. The prosecution case was that a letter dated 14/5/2010, purported to be from the Chief's office was presented in Succession cause No. 112 of 2010 in support of the petition for a grant of letters of Administration to the Respondent. **PW1 Shamshad Ahmed Yakubu** a brother to the late **Mohamed Yusuf Yakub** whose property was the subject of the succession cause followed up the matter with the Chief's office and with the police. Investigations revealed that the Letter was not written by the Chief's office. The Respondent who is an adopted son to the deceased in the succession cause was arrested and subsequently charged with the offence herein.
4. In his defence the Respondent gave unsworn evidence. His evidence was that he went to the Chief's office where he met a man and lady who represented themselves to him as the Chief's assistants. That the Chief was not present and he left the death certificate and the particulars of the beneficiaries behind and he was told to return the following day for the Chief's letter. On 14/5/2010 he collected the Chief's letter and he took it to his advocate's office for purposes of petitioning the court for a grant. The Respondent denied having forged the letter. He blamed the

case on the bad blood between him and his uncle who didn't consider him as part of the family because he was adopted. The Respondent stated that the uncle was unhappy with him because the uncle expected to inherit the entire estate the subject of the succession proceedings.

5. The Trial Magistrate acquitted the Respondent in both count 1 & II. The appellant was dissatisfied with the acquittal and appealed to this court on the following grounds:-
 - (a) That the entire judgment of acquittal was against the weight of the prosecution evidence on record.
 - (b) That the learned Magistrate erred in law by misapprehending and misapplying the law vis-a-vis the particulars and facts of the charges.
 - (c) That the learned Magistrate erred in law by failing to appreciate the definition of forgery U/Section 345 of the Penal Code.
 - (d) That the learned trial Magistrate failed to appreciate that he is enjoined in law to convict for offences other than those charged but proved in the court of trial, section 179(1) (2) and 180 of the Criminal Procedure Code.
6. The appeal was convased by way of written submissions which I have considered.
7. This being the first appellate court, this court is duty bound to re- evaluate the evidence and the record afresh and come to its own conclusions and inferences [*See Okeno –vs- Republic (1972) EA 32*].
8. S. 357 of the Penal Code provides as follows:-

“Any person who, with intent to defraud or to deceive -

(a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing; or

(b) knowingly utters any document or electronic record or writing so made, signed or executed by another person, is guilty of a felony and is liable to imprisonment for seven years.”

9. There is no evidence on record which links the Respondent to the making of the document in question or having abetted the making of the same. The Chief, **PW2 JACKSON CHEMININGWA, PW4 WALTER AWINO AKETCH** of the Chief's office and **PW5 GILLEAN SHIVAIRO** a Clerical officer in the Chief's office denied having signed the letter. However, only the Chief's specimen Signatures were examined by the document examiner, **PW7 CIP ALEX MWONGERA**. The document examiner gave the opinion that the letter in question was not written by the Chief. The Respondent's specimen signatures were not examined. The opportunity existed for any other person other than the Respondent to forge the Letter in question. Although the Chief testified that he kept his official stamp under Lock and Key, it is clear from the evidence of **PW4** and **PW5** who worked in the Chief's office that the Chief normally left behind stamped blank papers bearing his letter head.
10. With the foregoing, I agree with the judgment of the trial Magistrate. The appeal has no merits and is dismissed.

B. THURANIRA JADEN

JUDGE

COURT: Judgment dated and delivered this 17th March 2016.

B. THURANIRA JADEN

JUDGE