



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CRIMINAL APPEAL NO. 20 OF 2015**

***(BEING AN APPEAL FROM THE ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 2596 OF 2011, CHIEF MAGISTRATE'S COURT MOMBASA – HON. EKHUBI SRM)***

**JOHN OUCHO..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

The Appellant was convicted on the alternative count of procuring execution of documents by false pretences contrary to section 355 of the Penal code. 3<sup>rd</sup> count of attempted stealing contrary to section 275 as read with section 389 of the Penal code. 4<sup>th</sup> count uttering a false document contrary to section 352 of the penal code. He was sentenced to five months imprisonment on each of the three counts. The sentence was ordered to run consecutively.

The particulars in respect to the alternative charge to count II are that on the 7<sup>th</sup> day of February 2011 in Family Bank Mombasa Branch, by means of false and fraudulent representation as in the nature and content of cheque No. 017436 of Kshs.78,114.75 a document he procured Frida Samba Mwanyalo to execute the said cheque.

In respect to the third count of attempted stealing, the particulars are that on the 7<sup>th</sup> day of February 2011 at Family Bank Mombasa Branch he attempted to steal Kshs.78,114.75 the property of Leisure Lodge Resort.

In Count IV the particulars are that on the 7<sup>th</sup> day of February 2011 at Family Bank Mombasa Branch with intent to defraud, knowingly and fraudulently uttered a certain forged cheque leaf No. 017436 for Kshs.78,114.75 to Fridah Samba Mwanyalo a teller in the said Bank, purporting it to be a genuine and valid cheque drawn by Leisure Lodge Resort.

Being dissatisfied by both the conviction and sentence, the Appellant lodged this appeal.

The prosecution called seven witnesses in support of their case whereas the defence called two.

This being the first Appellate court its obligated to re-consider and re-evaluate the evidence on record so as to arrive at its own conclusions bearing in mind that it did not have the opportunity to observe the demeanour of the witnesses. Okeno –V- R 1972 EALR P32.

**BRIEF FACTS**

Cheque leaf No. 017436 for Kshs.78,114.75 belonging to Leisure Lodge Resort was issued to Agridat Kenya Ltd one of the Hotels Suppliers of goods. The name of the payee was altered to that of Jabwa Agencies and the alteration was countersigned. PW 3 and PW 4 who were the authorised signatories denied having countersigned the alteration of the payee from Agridat to Jabwa Agencies.

Jabwa Agencies account with Family Bank belonged to the Appellant. When the Appellant was interrogated by police he told them that the cheque was handed over to him by one Gibson Warui Karanja who in his defence denied such a transaction.

The learned trial magistrate in his judgment observed that it's the 1<sup>st</sup> Accused (now the Appellant) who presented the cheque to the Bank in his favour. He was to be the beneficiary of the proceeds.

Therefore upon a careful evaluation of the evidence on record, I find no reason to fault the finding of the learned trial magistrate. It's the Appellant who presented a forged cheque to the bank. The said cheque had the payee cancelled from Agridat Kenya Limited to Jabs Agencies. The account of Jabwa Agencies belonged to the Appellant. The conviction was safe.

On sentencing, the Appellant was sentenced to five months imprisonment in respect of the three counts.

The sentence was to run consecutively. It is noted that he was treated as a first offender. No money was stolen. The Appellant was convicted and sentenced on 28<sup>th</sup> day of January 2015. He has served close to eight months imprisonment. The term served is deemed to be enough punishment. He is set at liberty unless otherwise lawfully held.

**Judgment delivered, dated and signed this 25<sup>th</sup> day of September 2015 in open court and in the presence of Masila learned counsel for the DPP, learned counsel for the Appellant Magolo, Court Assistant Mr. Musundi.**

**M. MUYA**

**JUDGE**

**25/9/2015**