



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 213 OF 2012**

***(APPEAL AGAINST CONVICTION AND SENTENCE FROM ORIGINAL CRIMINAL CASE NO. 793 OF 2012 IN THE PRINCIPAL MAGISTRATE'S COURT AT VIHIGA ARISING FROM THE JUDGMENT OF [S. N. MWANGI, RM] DATED 5.9.2012)***

**SIMON EMILE OMITO ..... APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The appellant was charged with the offence of forgery contrary to **section 349** of the **Penal Code**. He was also charged with a second count of uttering a false document with intent to defraud contrary to **section 357 (b)** of the **Penal Code**. The particulars for the offence for each count were as follows: **COUNT I** – *On the 28<sup>th</sup> day of August 2012 at Mbale Township within Vihiga County, with intent to deceive, forged an Equity Bank cheque No. 000600 purporting to be genuine cheque issued by Texas Cancer Centre Ltd.*

**COUNT II** – *On the 4<sup>th</sup> day of September, at Equity Bank Mbale branch in Mbale Township within Vihiga County with intent to defraud knowingly uttered cheque No. 000600. Drawn by Equity Bank Westlands Branch for KShs.300,000/= to Josiah Pindu which was purportedly issued by Texas Cancer Centre Ltd.*

The appellant pleaded guilty to both counts and was sentenced to serve **two (2)** years imprisonment for each count. The sentence was to run consecutively. The main ground for appeal is that since the offence was related there was no need to have the sentence run consecutively. The appellant contends that it would have been advisable to have the sentence run concurrently so that he can serve two years imprisonment instead of four years. The appellant submitted that he suffers from high blood pressure and this was part of his mitigation before the trial magistrate.

Mr. Oroni, State Counsel, opposed the appeal. Counsel submitted that the appellant was sentenced to serve two years for count one although the maximum sentence is three years. The maximum sentence for count 2 is seven years. The sentence is fair and the appellant can get medical treatment while in prison.

The particulars of the offences are that the appellant obtained a cheque leaf from Texas Cancer Centre Limited and wanted to deposit it in his account. The attempt was nabbed by the bank before the money was taken. The appellant pleaded guilty and sought for leniency. Since the offence was related as there the count of forging the cheque and uttering the stolen cheque, I do find that it is convenient for the sentence to run concurrently as opposed to consecutively. The appeal is hereby allowed. The sentence of four years imprisonment is set aside. The appellant to serve two years imprisonment for each limb of the offence and the sentence shall run concurrently from the date of conviction. Therefore the appellant shall serve two years imprisonment from the date of conviction.

**Delivered, dated and signed at Kakamega this 17<sup>th</sup> day of February 2014**

**SAID J. CHITEMBWE**

# **JUDGE**