REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 52 OF 2014

MOSES OTIENO AWINO.....1ST APPELLANT

NICKSON OMONDI OCHIENG.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[From original conviction and sentence in the Principal Magistrate's Court at Tamu Criminal Case No. 140 of 2014]

J U D G M E N T

The appellants were charged with the offence of Possessing Papers for forgery contrary to section 367 (a) of the Penal Code (cap 63 Laws of Kenya).

The particulars were that on the 20th March 2014 at Koru area in Muhoroni District within Kisumu County, without lawful authority or excuse, knowingly had in possession 173 paper intended to resemble and pass as Special Papers such as provided and used in making Kshs. 1000/= currency note.

Both appellants pleaded guilty and were sentenced to 4 years imprisonment each hence this appeal. They have filed 9 grounds of appeal but Mr. Onyango counsel for the appellants condensed them into three.

The first ground is that the plea unequivocal and that had the trial court taken this into consideration the plea of guilty ought not to have been entered. Counsel argued that the appellant although they pleaded guilty by saying **"it is not true"**, that did not amount to an admission of the charge.

He further argued that the sentence was excessive in the circumstances taking into account that the appellants were first time offenders. He argued that the trial court did not take into consideration the probation report.

On his part the learned state counsel agreed with the trial court. He supported the conviction and the charge.

This court's duty is to reevaluate afresh the proceedings and the judgment and come with afresh

independent decision taking into consideration that it did not have the benefit of conducting the trial. See **Okeno -VS- Republic [1973] EA 32**. Having carefully perused the proceedings, it is clear that when the charge was read to the appellants on 20-3-2014 the appellants pleaded guilty and the facts were reread the following day, that is 21-3-2014. The following day the prosecution amended the charge sheet to read 19-3-2014 instead of 20-3-2014. The same was read over to the appellants and they pleaded guilty. The prosecution read the facts and both of them pleaded guilty. On mitigation the 1st appellant prayed for forgiveness and leniency. The 2nd appellant on his mitigation equally asked for leniency.

My understanding therefore is that I do not find any sufficient evidence that the appellants failed to understand the charge facing them. Infact they slept over it and on the following day save for the changes on the date in the charge sheet by the prosecution nothing significantly changed. Further, even after the date was changed the appellants were still granted the opportunity to plead which they did.

Although the 2nd appellant gave an explanation during mitigation of how they got into the car, he ….....went ahead to plead for leniency. It would have been difficult if after reading of the facts apart from pleading guilty he goes ahead to qualify. That would have amounted to unequivocal plea.

In the process I do agree with the learned state counsel that section 348 of the Criminal Procedure Code pre..... the appellants from arguing otherwise. The plea I find was equivocal.

Was the sentence excessive? The Acts stipulates 7 years custodial sentence but the trial court did mete out 4 years. This court will only interfere with the sentence if the same was excessive or inordinately high and that the court arrived at it based on wrong principles of law. The court's discretion is normally allowed during the sentencing. I do not find that the 4 years meted out against the appellants was excessive nor do I find that the court exercised its discretion unfairly.

In the circumstances, I do not find this appeal meritorious and the same is dismissed.

Dated, signed and delivered at Kisumu this 16th day of December, 2014.

H.K. CHEMITEI

JUDGE