



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 12 OF 2012.

PETER LOTANGOR ::: APPELLANT.

VERSUS

REPUBLIC ::: RESPONDENT.

(Being an appeal from the original conviction and sentence of T. Nzioki– SRM in Criminal Case No. 715/2010 delivered on 4th May, 2011 at Lodwar).

J U D G M E N T.

Peter Lotangor (herein, the appellant) was charged before the Senior Resident Magistrate at Lodwar with being in possession of forged bank notes contrary to section 359 of the penal code. It was alleged that on the 15th October, 2010 at Lodwar town, he was found in possession of nineteen (19) forged bank notes of Ksh. 1,000/=denomination, knowing them to be forged. He pleaded not guilty to the charge but after a full trial was convicted and sentenced to five (5) years imprisonment.

Being dissatisfied with the conviction and sentence, the appellant preferred this appeal on the basis of the grounds contained in the petition of appeal filed herein on 10th February, 2012. He essentially complains that the prosecution failed to call a material witness and that his defence was disregarded by the learned trial magistrate. He also complains that the evidence of PW1, PW2 and PW3 was contradictory yet the contradiction was not given consideration by the learned trial magistrate. He further complains that his conviction was motivated by extraneous factors and that the doctrine of recent possession was misapplied by the learned trial magistrate.

The appellant went further to complain that the prosecution case was insufficient to warrant a conviction and that his constitutional rights were breached by being detained in police custody for more than the twenty four (24) hours stipulated by the law.

The appellant appeared in person at the hearing of the appeal and relied on his written submissions in support of his appeal.

The learned prosecution counsel, M/s. Limo, appeared for the state/respondent and opposed the appeal by submitting that the prosecution evidence was sufficient to convict the appellant as it showed that the appellant was found in possession of bank notes which were proved to be fake by a document examiner.

That, the evidence by the prosecution witnesses was corroborative and that, the doctrine of recent possession was properly applied by the trial court.

On the allegation that the appellant's constitutional rights were breached, the learned prosecution counsel submitted that the issue was never raised during the trial and in any event, the appellant has a right to

institute civil proceedings if at all his rights were violated.

The learned prosecution counsel called for a dismissal of this appeal.

A first appeal such as the present appeal takes the form of a re-hearing of the case with regard being given to the fact that the trial court had the advantage of seeing and hearing the witnesses as opposed to an appellate court.

The evidence by the prosecution came from a total of four (4) witnesses who included a document examiner, **C. Inspector Alex Mwongera (PW1)**, who produced a report compiled by a colleague showing that the nineteen (19) currency notes allegedly recovered from the appellant were fake.

The rest of the witnesses were police officers based at the Lodwar Police Station.

P.C. Godana Kere (PW2) and **P.C. Pius Ochieng (PW4)**, testified to the effect that they acted on information from members of the public and upon searching the appellant found him in possession of the counterfeit notes of Ksh. 1,000/= totaling Ksh. 19,000/=. They arrested him immediately.

P.C. Elkano Abuduba (PW3), investigated the case and thereafter charged the appellant accordingly.

In his defence, the appellant alleged that the case was brought against him due to a grudge with P.C. Ochieng. He said that he lived at Nakwamekwi and worked in a hotel and that on 13th September, 2010 he was at a bus (matatu) stage preparing to travel to a place called Gold when he was accosted and assaulted by police officers who searched his person and took away his Ksh. 400/= which was his bus-fare. Thereafter, he was escorted to Lodwar Police station.

This defence was considered by the learned trial magistrate and found to be untrue as the appellant was arrested on 15th October, 2010 and not the 13th September, 2010 as implied in his defence.

The learned trial magistrate found the prosecution evidence to be credible and held that it had established the charge against the appellant beyond reasonable doubt. Consequently, the appellant was convicted and sentenced accordingly.

This court's consideration of the evidence leads to the conclusion arrived at by the learned trial magistrate. It was credibly shown by the prosecution that police officers acting on information from members of the public accosted the appellant and conducted a search on his person. It was then that they found the fake currency notes in his possession and arrested him. The currency notes were found to be fake or false after they were examined by a document examiner.

In view of that credible and cogent evidence by the prosecution the defence raised by the appellant was discredited and unsustainable. His conviction by the learned trial magistrate was therefore safe and proper such that it cannot be interfered with by this court.

With regard to the sentence, the appellant was charged under section 359 of the penal code which provides for imprisonment for seven (7) years. The appellant was sentenced by the learned trial magistrate to five years imprisonment. This was a lawful sentence but on a higher side for a first offender. Accordingly, the sentence is hereby reduced to three (3) years imprisonment. Otherwise, the appeal is dismissed.

[Delivered and signed this 26th day of September, 2013.]

J.R. KARANJA.

JUDGE.

