



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

**CRIMINAL APPEAL NO. 50 OF 2011**

**KEITH YAMANE WANYAMA ..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(APPEAL ARISING FROM THE DECISION OF HON. T. A. ODERA, SRM IN KITALE CHIEF  
MAGISTRATE'S COURT IN CRIMINAL CASE NO. 693 OF 2010)*

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

The appellant, **Keith Yamane Wanyama**, appeared before the Senior Resident Magistrate at Kitale charged with four counts viz:-

1. *Personating a Police Officer contrary to Section 382 of the Penal Code, in that on the 10th November, 2009 at Kenya Credit Traders Kitale Branch in Kitale Town of Trans-Nzoia West District, with intent to defraud falsely presented himself to be an Administration Police Officer.*
2. *Obtaining goods by false pretence contrary to Section 313 of the Penal Code, in that on 19th November, 2009 at Kenya Credit Traders in Kitale township, with intent to defraud obtained an L.G. TV and a seven seater sofa set all valued at Kshs. 94,080 by falsely pretending that he was an Administration Police Officer and presenting a forged payslip for the month of October 2009, a fact he knew to be false.*
3. *Making a document without authority contrary to Section 357 (a) of the Penal Code, in that on the 19th November 2009 at Kenya Credit Traders in Kitale township, with intent to defraud and without lawful authority or excise made a payslip in the name of Keith Yamane Wanyama purporting it to have been issued by the Office of the President (Administration Police Department).*
4. *Uttering a document with intent to defraud or deceive contrary to Section 357 (b) of the Penal Code, in that on the 19th November, 2009 at Kenya Credit Traders in Kitale Township with intent to defraud or deceive knowingly uttered a payslip which had been made without authority.*

After a full trial, the appellant was convicted on all the counts and sentenced to serve two (2) years imprisonment on count one, one (1) year imprisonment on count two, and three and a half years imprisonment on counts three and four. The sentences were to run concurrently.

Being dissatisfied with the conviction and sentence, the appellant filed this appeal on the basis of the grounds in the petition of appeal filed herein on 27th April 2011.

Basically, the said grounds are a general complaint that the appellant was convicted on evidence which was insufficient and based on extraneous factors.

At the hearing of the appeal, the appellant appeared in person and relied on his written submissions.

The Learned Prosecution Counsel, **Mr. Chelashaw**, appeared for the State Respondent and opposed the appeal by submitting that there was no dispute that the appellant presented himself to a hire purchase shop and purchased goods on hire purchase using false documents showing that he was an Administration Police Officer. That, the said documents were confirmed to be fake by Pw 1 and that the appellant disappeared thereafter only to be arrested at a later stage while attempting to defraud another hire purchase shop. That, it was established by the Investigations Officer that the appellant was previously an Administration Police Officer but was dismissed from service. That, at the time of presentation of false documents, the appellant had already been dismissed from service.

The Learned Prosecution Counsel contended that the evidence against the appellant was overwhelming for a sound conviction and therefore, this appeal should be dismissed.

In the rejoinder to the foregoing submissions, the appellant stated that the letter from the Commandment of the Administration Police was not produced by its maker contrary to the Evidence Act and that the charge sheet was defective as the name appearing in the payslip was not indicated in counts two and four and count three was defective for want of duplicity and for being contradictory with the evidence on record.

After having considered the submissions by both sides, the duty of this Court is to reconsider the evidence and draw its own conclusions bearing in mind that the trial Court had the advantage of seeing and hearing the witnesses.

In brief, the Prosecution case was that the appellant was formerly employed by the Administration Police force but was dismissed from service on or about 21st January 2009. However, on the 19th November 2009 he proceeded to Kenya Credit Traders Kitale Branch and purchased on hire-purchase, a television set and a sofa set. The transaction was facilitated by **John Muiruri Muchiri (Pw 1)**, the Branch Manager of the said Kenya Credit Traders and was witnessed by an employee of the firm, **Jacob Asiebula Maloba (Pw 2)**.

In the cause of the transaction, the appellant represented himself as an Administration Police Officer and presented a payslip for the month of October 2009, a national identity card and a certificate of appointment to the Administration Police Force. He also presented a surety said to be a fellow Administration Police Officer of the rank of Corporal.

After purchasing the said items, the appellant defaulted in the payment of the hire-purchase installments and this prompted the Kitale Kenya Credit Traders to verify through its head office the documents presented by the appellant. The said documents were found to be false and an effort to trace the appellant was commenced. He was later traced, arrested and charged with the present offences after necessary investigations by **P. C. Fresto Onyambo (Pw 3)**, through which the items obtained by the appellant were recovered and photographed by **P. C. William Kimutei Kemboi (Pw 4)**.

The appellant denied the charges and indicated in his defence that he was recruited in the Administration Police Force as a Constable and confirmed on 28th February 2008. He was however, interdicted on 23rd January 2009 for allegedly deserting duty while serving at the D.C's Office Endebess. He received his full salary on 19th November 2009 and proceeded to Kenya Credit Traders Kitale where he purchased a TV set and a set of sofa seats on hire purchase using his identity card, letter of appointment and a letter from his boss showing that he had lost his original documents. He also provided a guarantor but in the same month of November 2009, he was formally sacked from the Administration Police Force. He explained his position to the Manager of the Kenya credit Traders but was arrested on 24th February 2010 over another offence. He was eventually charged with the present offences which he denied.

The Learned Trial Magistrate considered all the evidence placed before her and in convicting the appellant stated as follows:-

*“Prosecution adduced firm and consistent evidence against accused that he had been sacked from the force on 21/01/2009. They produced the letter from the Commander dated 02/08/2010 (P. ex 15) to show the accused was no longer in service. The said letter further indicates that accused salary was stopped with effect from 05/02/2009 and therefore the October 2009 payslip was a forgery.*

*I have no doubt that the said letter (p.Ex 15) is from the Administration Police Commander and I do not see why he would have lied against the accused. The Investigating Officer said he got the letter in the course of his investigations herein. I am satisfied that accused was not a Police Officer at the material time and that he knew the same and yet he presented himself to Pw 1 as one and obtained the television and sofa set valued at Kshs 98,080 by pretending to be a Police Officer from that he made the purported October 2009 payslip and uttered it to Kenya Credit traders Kitale Branch”.*

From the foregoing, it was apparent that the Learned Trial Magistrate relied heavily on the letter from the Administration Police Commandant dated 2nd August 2010 (i.e. P.Ex 15) to hold that the appellant personated a Police Officer and obtained goods by false pretenses by making a false payslip and uttering the same with intent to defraud and/or deceive.

Indeed, the said letter was capable of establishing all the four counts against the appellant as they all depended on one another. However, in the opinion of this Court, the authenticity of the letter was not proved. It was not known how it was obtained by the Investigations Officer (Pw 3) and why its author or maker was never called to testify. Therefore, it was never proved beyond reasonable doubt that the appellant was fired from the Administration Police Force on 21st January 2009 as alleged by the Prosecution whereas the appellant's contention was that he was interdicted in October 2009 and formally dismissed from the force in November 2009 after having obtained the material goods from the Kenya Credit Traders through hire purchaser. It followed that at the time the appellant presented his October 2009 payslip and the appointment certificate the documents were genuine thereby discrediting any notion that his intention was to defraud or deceive the Kenya Credit Traders. In any event, there was no evidence from a document examiner to prove that the material payslip which apparently linked the appellant to the material offence was a false or forged document and if it was, whether the appellant was the person responsible for the forgery.

Consequently, this Court must find and hold that the charges were not proved against the appellant to the required standard and therefore his conviction on all the four counts by the Learned Trial Magistrate was unsafe as the burden of proof rested with the Prosecution and it was not the duty of the appellant to prove his innocence.

In sum, this appeal must and his hereby allowed to the extent that the conviction of the appellant in all the four counts is quashed and the sentences in respect thereof set aside.

The appellant shall forthwith be set at liberty unless otherwise held.

**(Delivered and signed at Kitale on this 13th day of November, 2013.)**

**J. R. KARANJA**

**JUDGE**