



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 165 of 2012

GLEN EWELE alias DAVID ABBEYAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 1595 of 2010 of the Chief Magistrate's Court at Mombasa T. Ole Tanchu - SRM)

JUDGMENT

The appellant and another were charged with six counts. The first one was that of making a document without authority contrary to section 357(a) of the Penal Code.

The second one was for altering a document with intent to defraud. The third one was for making another document without authority contrary to section 357(a) of the Penal Code.

The fourth count with altering a document with intent to defraud.

The fifth count with making a document without authority contrary to section 357(a) of the Penal Code and the sixth count with altering a document with intent to defraud.

On the seventh count the Accused is charged with attempting to obtain credit by false pretences contrary to section 313 as read with section 389 of the penal code.

The appellant was Convicted on counts Nos. 1,3,5 and 7 and acquitted on counts Nos. 2,4, and 6. The appellant was sentenced to two years imprisonment each of the counts he was found guilty and sentence was ordered to run concurrently.

He has appealed on Conviction on the grounds that the names on the charge sheet were not his and that there was no evidence to the effect that he was the maker of the documents he is alleged to have made and that the chain which was a vital link to the prosecution case was not produced as exhibit.

The appeal is opposed by the state represented by Mr. Jami whose contention is that there was no misdirection on the trial magistrate who on page 43 had this to say, **“Having established that it is the first Accused person who presented the false cards, it follows therefore, that he is the one who made the master card, Visa card and UN card or he knows the persons who did so and in the absence of any plausible explanation as to how he came by the cards, the only logical conclusion is that it is the first Accused who made the said documents”**.

A perusal of the proceedings found on page 26 PW4 (Faiz Said Salim) a salesman in the shop known as Sonara Budha told the court that, “ **I recall on 22nd May, 2010 I was at work with Abdul Jalin at about 4:00 pm, two people entered the shop, a man and a woman and the lady chose some gold and was told the price was Ksh. 62,0000/=. The man said he could pay by card. The man removed a master card and handed it over to Abdul Jalin who put it under ultra violet light and he discovered that it was fake. Accused No. 1 then esquired why we were keeping him.**

We told him we were waiting for authorization. He removed another visa card and his Identity card that he works for UN in the event that the other card had a problem. Simon arrived and took further action and called police. The persons who came as customers are 1st and 2nd Accused”.

I am satisfied that the trial magistrate arrived at the correct conclusion. There was evidence by PW 1, PW 2 and PW 3 that the cards presented to the court as exhibits were not genuine ones as they were fake. These witnesses were experts in their field of work. There was no good reason not to believe their evidence. It is the appellatant who produced the cards in a shop where his colleague a lady was buying gold. He must or ought to have known their origin including the name Glen Ewele.

I find no merit in this appeal and it is dismissed.

Judgment dated and delivered in open Court this **23rd** day of **November, 2012.**

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M. MUYA
JUDGE

In the presence of:-

Mr. Jami for the state

Court clerk – Philip

Accused