



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 22 OF 2011

(Arising from Criminal Case No. 1046 of 2011 of the Chief Magistrate's Court at Mombasa: I. Ruguru – DMII)

JAMES MUNGAI MWANGI APPLICANT

=VERSUS-

REPUBLIC RESPONDENT

RULING

By a letter dated 8th April 2011 **Ndegwa Muthama Katsiya Associates Advocates** have sought that the High Court exercise its powers of review in **CM CC 1046/2011 REPUBLIC –VS- JAMES MUNGAI MWANGI**. In that case the accused is charged with **ISSUING A BAD CHEQUE CONTRARY TO SECTION 316(A) (1) OF THE PENAL CODE**. The particulars of the offence were as follows:

*“On the 14th day of January 2011 at **SUMMIT COVE LINES COMPANY** at Kibarani area in Mombasa district within Coast Province, with intent to defraud or deceive issued a cheque No. 000028 dated 14th February 2011 for the amount of Kshs.20,000/- which was in favour of **SUMMIT COVE LINES COMPANY** knowing that your account No. 1209000134 at NIC bank Nkurumah road branch had no sufficient funds”*

A careful look at these facts reveals that although the date of the offence is given as 14th January 2011 i.e. that is the date when the offending cheque was issued, the same facts clearly show that the cheque issued on 14th January 2011 was infact dated 14th February 2011 a month later making it what is known in common parlance as a **post dated** cheque. Post-dated cheques are **not** covered by S. 316A(1) of the Penal Code. S. 316A(2) clearly provides:

“(2) Subsection (1) (as does not apply with respect to a post-dated cheque.” [my own emphasis]

The charge sheet therefore discloses no offence known to law and ought to have been rejected by the trial court. The magistrate ought not to have commenced the hearing of this charge which was clearly defective in law. S. 316(2) makes it very clear that for one to issue a **post-dated** cheque which is consequently dishonoured does not constitute an offence known to law. In the circumstances the trial court ought to have rejected the charges. In line with S. 89(5) of the Criminal Procedure Code I do hereby reject these charges and discharge the accused thereof.

Dated this 20th day of May 2011.

M. ODERO
JUDGE