



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**  
**CRA NO.80 OF 2010**

***(Appeal arising from WBY PM CR. NO.1003 of 2010)***

**SALIM ASERO ATUULO.....APPELLANT**  
**VRS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was convicted of being in possession of papers of forgery c/s.367 (a) of the Penal Code and sentenced to serve 3 years imprisonment. He appeals against the judgment and relies on the following grounds:

- 1. That the plea was taken unprocedurally.**
- 2. The offence was not proved against him.**
- 3. That his mitigation was not considered in passing sentence.**

The State Counsel Mrs. Leting opposed the appeal on grounds that the appellant was convicted on his own plea of guilty and as such he has no right of appeal against conviction. The State submitted that the plea was properly taken and the sentence was reasonable.

The court record shows that the substance of the charge and all elements were read and explained to the Appellant in Kiswahili language. The court must have inquired the language that the accused understood before choosing to use Kiswahili language. The facts of the case were read and explained in the same language which the Appellant admitted as correct. There is nothing to suggest that the Appellant did not understand the charge and the proceedings. The plea was therefore unequivocal.

The facts of the case were that the Appellant went to the shop of the complainant at Kwa Dina Estate in Webuye and introduced himself as a money trader. He wanted the complainant to enter into business of making currency. He asked the complainant to give him Ksh.20,000/= so that he could produce for him Ksh.50,000/=. The complainant suspected that the appellant was a criminal and alerted the police who arrested him from the shop. Police conducted a search on the person of the Appellant and recovered 37 pieces of paper which resemble special papers for making money or currency notes. The accused also had some fake notes in his pockets. The exhibits were produced in evidence. It is my considered opinion that the facts constitute an offence under section 367 (a) of the Penal Code. The Appellant stated in his petition that the exhibit was not tendered in evidence. I find this contention to have no basis since it is clear on record that the exhibit was produced. The Appellant was convicted on his own plea of guilty and only has a right of appealing against the sentence the court having found that the plea was unequivocal.

The maximum sentence provided for by s.367 (a) is 7 years. The Appellant was sentenced to 3 years imprisonment which is reasonable. The sentence is neither harsh nor excessive. The Appellant complained that the magistrate did not consider his mitigation. In his mitigation the Appellant said that he

is new in Webuye and asked for leniency. The court noted that it had considered his mitigation but stated the offence was serious. Considering the sentence imposed and the nature of the offence, I find that the trial court considered the appellant's mitigation. I find that the appeal has no merit. I hereby uphold the conviction and the sentence.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered this 18<sup>th</sup> day of May 2011 in the presence of the Appellant and the State counsel Mr. Ogoti.

**F. N. MUCHEMI**  
**JUDGE**