



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL NO. 14 OF 2008

HARRISON KIPRONO KIMETO:.....APPELLANT

VERSUS

REPUBLIC:.....RESPONDENT

JUDGEMENT

Harrison Kiprono Kimetto the appellant, was charged before Kabarnet Senior Resident Magistrates court with the offence of having in his possession papers or implements for forgery contrary to section 367(a) of the Penal Code. The particulars contained in the charge sheet were that on 25th July, 2007 at Marigat Township in Baringo District of the Rift Valley Province, the appellant, jointly with **Brian Kihanya Turence, John Ndegwa Karano** and **Swamwel Mwaniki Kariuki** were found being in possession of 380 papers intended to resemble and pass as special paper used for making bank or currency notes. They pleaded not guilty but after trial, the Learned Senior Resident Magistrate (**H.M. Nyaga**) acquitted two of the appellant’s co-accused but found him and the 1st accused guilty, convicted them and sentenced them to five (5) years imprisonment. The appellant was not satisfied with that conviction and sentence and moved to this court on appeal citing five(5) grounds of appeal which were filed by **Ms. C.F. Otieno** and Company Advocates. Later the said advocates informed the court that they had no further instructions as the appellant had been released on Presidential Amnesty. His whereabouts were unknown.

Mr. Oluoch, the Learned Senior Deputy Prosecution Counsel, invited me to determine the appeal in accordance with Section 354(3) of the Criminal Procedure Code. He did so on the authority of the **Court of Appeal Case of Joseph Kinoti -V- Republi (Nyeri CR. APPEAL NO. 54 of 2004)(VR)**. There the court stated as follows:-

“In our view, there is no mandatory requirement that either the appellant or his Advocate or the State should address the Court. It is nonetheless incumbent on the Court to consider the appeal and make a determination in accordance with Section 354(3) of Criminal Procedure Code.”

This judgement is prepared on that basis. The judgment of the Learned Senior Resident Magistrate is challenged on the following main grounds: that the appellant’s fair trial rights were infringed; that he was convicted on accomplice evidence; that his defence was not considered and that the charge was not proved.

This is a first appeal that being the case, this court is mandated to re-consider and re-evaluate the

evidence which was adduced before the trial court and arrive at its own independent determination on whether to uphold the conviction bearing in mind that the court did not see or hear the witnesses testify and should give allowance for that. **(See Njoroge -V- Republic (1987) KLR 19).**

The facts of the case were straight forward. In brief they were as follows: - **Ezekiel Chepkor Kases** (PW1) is a businessman at Marigat Township. In July 2007, he was approached by a youngman who pretended that he could supply him with maize. When PW1 asked for a sample, the youngman told him he would avail the same. He then left. On return his story changed. He offered to introduce PW1 to money makers. The money makers included the appellant and his co-accused. PW1 pretended to be interested and alerted police officers at Marigat Police Station.

On 27th July, 2007 the money makers who included the appellant went to PW1's shop with various items including paper powder, a drying agent, gas masks and gloves. As they set up their gadgets and started processing their products, police, at the signal of PW1, invaded the premises and arrested them. The police team included **PC John Manase Chumwa** (PW2) and **PC Edward Kamau** (PW3).

The two confirmed that they raided PW1's shop where they found PW1, the appellant and another money maker **Brian Kihanya Turence** the 1st accused. All had masks and rubber gloves. They also found various items which they took possession of. They also traced the 3rd and 4th accused at a local bar and arrested them.

PW3 took samples of the powder, syringes and bottles to the Government Chemist for analysis. **William Kaitu Munyoki** (PW5) was the analyst who analysed the samples and prepared a report which he produced at the trial.

The Learned Senior Resident Magistrate determined that all the accused persons had a case to answer and put them on their defence.

The appellant gave an unsworn statement in which he denied committing the offence. He told the court that as he discussed a possible maize deal with PW1 he was arrested for an offence he did not know.

That is in summary the evidence upon which the Learned Senior Resident Magistrate based his conviction of the appellant. Having independently reconsidered and re-evaluated the evidence which was adduced before the Learned Senior Resident magistrate I find that given the testimony of PW1, which was accepted by the Learned Senior Resident Magistrate, the defence put forward by the appellant was displaced. The Learned Senior Resident Magistrate concluded that the appellant and accused 1 were caught in the process of trying to make notes resembling Kenya currency notes. In his own words:-

“PW1 has described how he came to meet Accused 1 and 2 by then he had already informed the police of the plan he was being asked to be involved in. The police laid an ambush. They found PW1, accused1 and Accused 2 wearing masks and gloves. Some currency notes had been dyed while pieces of paper with impressions of Kshs. 1,000/- Kenya currency note were at the scene. To me it is clear that these items came with accused 1 and accused 2. Some powder was found at the scene. It was examined and was found to be starch. Empty boxes of baking powder packets were found in the bar. It is thus not correct for the accused to state that they found these items in PW1's shop. If they were there, why did Accused 1 and Accused 2 have to wear gloves and masks which were produced as exhibits?

The 380 papers were found to be plain white paper with impressions of Kshs. 1000/- currency notes. The papers marked 8H and 9I were examined by an expert. He found them to be ordinary paper with impression of Kshs. 1000/- Kenya currency note. The outlines of the portrait of the Head of State and the marking at the back - those of a herd of elephants are also visible. The logical conclusion is that these 2 papers were meant to be made to resemble a currency note. It is safe to assume that the other white papers with impressions of Kshs. 1000/- Kenya currency note were meant to undergo the same process which was described by PW1 - that of pouring some dye using a genuine bank note”

I have felt it necessary to quote at length from the judgment of the Learned Senior Resident

Magistrate because, in my view, he meticulously analysed the pertinent aspects of the evidence relating to the charge which faced the appellant and, his co-accused. He accepted the testimony of PW1 and gave his reasons for his rejection of the appellant's defence. I too am satisfied that given the testimony of PW1, the appellant's defence was not plausible.

I also do not think the testimony of PW1 was accomplice evidence. He alerted the police before the appellant and the co-accused committed the offence. In the premises, I reject grounds 2A, 3A, 4A, 5A, 5B and 5C of the Appeal With respect to grounds 1A and 1B which allege breach of the appellant's fair trial rights as then enshrined in the constitution, I think the alleged breach was not trial related and on the authority of the **Court of Appeal's** decision in **Mbugua -V- Republic (CR APPEAL NO. 50 OF 2009) (UR)**, the same could not vitiate the trial. There is in the premises no merit in the said grounds.

In the end I find and hold that the guilt of the appellant was proved beyond reasonable doubt. The conviction of the appellant was therefore sound and safe. I uphold the same.

This appeal fails in its entirety. The conviction and sentence rendered by the Learned Senior Resident Magistrate is hereby confirmed.

**DATED AND DELIVERED AT ELDORET
THIS 10TH DAY OF AUGUST, 2011**

**F. AZANGALALA
JUDGE**

**Read in the presence of:-
Mr. Chirchir for the state.**

**F. AZANGALALA
JUDGE
10TH AUGUST, 2011**