



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 215 OF 2010**

*[From original conviction and sentence in Criminal Appeal No. 3448 of 2010 of the Chief Magistrate's Court – Nakuru – W. Juma, CM].*

LUCY NJOKI NJUGUNA.....APPELLANT

**VERSUS**

REPUBLIC.....RESPONDENT

**JUDGMENT**

**Lucy Njoki Njuguna**, the Appellant herein, was charged with the offence of being in possession of forged currency notes **contrary to Section 359 of the Penal Code**. The particulars of the charge were that on 25<sup>th</sup> June, 2010 at **Banita Gichagi Solai**, in Rongai District, without lawful authority or excuse, had in her possession twenty (20) forged currency notes of denominations of Kshs.100 each, bearing serial numbers – 8 notes with serial number **CM9914022**, 8 notes with serial number **CM9914062** and 4 notes with serial number **CM9914060**, knowing them to be forged currency. The plea was taken on 28<sup>th</sup> June, 2010 when she was convicted and sentenced to serve three years imprisonment.

The appellant being dissatisfied with both the conviction and sentence, filed this appeal. The grounds upon which the appeal is preferred are contained in her Memorandum of Appeal filed on 12<sup>th</sup> July, 2010. They are as follows;

- (1) **THAT the plea was unequivocal;**
- (2) **THAT the court failed to explain to the appellant the consequences of pleading guilty;**
- (3) **THAT the court failed to take into account the circumstances of the offence.**

**Mrs. Ndeda**, counsel who appeared for the Appellant argued that the appellant did not understand the charge because when the charge was read to her, she replied in Kiswahili, **“nimekubali”** but in mitigation, she claimed to have been given the money as change and that amounted to demand of the charge. Counsel also argued that after the facts were read to the appellant, she did not respond in Kiswahili. On sentence, counsel urged that the court failed to take into account the Appellant's mitigation; That since the charge carries a maximum of 7 years a custodial sentence, 3 years was not justified.

The appeal was opposed by **Mr. Omwega**, counsel for the State, who urged that the plea was unequivocal as there was interpretation in Kiswahili language, which language the appellant understood; That what the appellant said after the facts were read to her was consistent with the plea and that the sentence meted out was legal. Counsel further submitted that the maximum sentence for the offence charged is 7 years imprisonment, the offence is serious and the court should not interfere with the sentence.

I believe the appellant wanted to plead that the plea was equivocal. Otherwise, the 1<sup>st</sup> ground supports the prosecution case that the plea was unequivocal.

It is clear from the quoram of 28<sup>th</sup> June, 2010 that when the charge was read to the Appellant, it was through an interpreter in the Kiswahili language. The appellant replied “**nimekubali**” and after facts were read to her, it was recorded in the English language that she admitted the facts that she had fake money. I do not think it mattered what language the court recorded the appellant’s reply. It is clear from that reply that she understood the charge and the facts and therefore the plea was unequivocal.

However, in her mitigation, the Appellant explained that she had been given the money as change. At that stage, she was offering an explanation as to how she had come by the moneys. **Section 359** of the **Penal Code** provides as follows;

**“Any person who, without lawful authority or excuse, the proof of which lies on him, imports or purchases, or receives from any person, or has in his possession a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of felony, and is liable to imprisonment for seven years.”**

The necessary ingredients to prove an offence under the above section are;

- (1) that the person imports, receives, purchases or was in possession of the forged currency notes; and***
- (2) it was without lawful authority or without excuse; and***
- (3) that the currency was forged; and***
- (4) the person must have known that the currency was forged.***

In this case, the appellant was found in possession of the forged currency. She did not have lawful authority to have them but she offered an explanation as to how she came by that currency, that it was given to her as change. That explanation automatically changed her plea to one of not guilty and the court should have therefore allowed her time to explain. A plea of not guilty should have been entered. It was also not shown that she knew the currency to be forged. The explanation given in mitigation made the plea to be equivocal and a plea of not guilty should have been entered so that the matter could proceed to full hearing where the Appellant could then fully explain how she came by the forged currency.

For the above reasons, I do allow the appeal, quash the conviction and set aside the sentence. The appellant was convicted and sentenced on 28<sup>th</sup> June, 2010. She was released on bail on 5<sup>th</sup> August, 2010 after only serving one month imprisonment. The offence attracts a maximum sentence of 7 years and the appellant will therefore not suffer any prejudice.

In my view, she should appear before the Chief Magistrate’s Court for a proper plea to be taken before a different Magistrate so that the case can be heard and determined after a full trial. It is so ordered.

**DATED** and **DELIVERED** this 3<sup>rd</sup> day of October, 2011.

**R. P. V. WENDOH**  
**JUDGE**

**PRESENT:**

Mrs Ndeda for Appellant  
Mr. Nyakundi for Respondent  
Appellant - present  
Kennedy – Court Clerk