



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

**Criminal Appeal 161,162,163,164 & 165 of 2007
BERNARD KAMUCHERE RUBARI.....APPELLANT**

VERSUS

REPUBLIC.....RESPONDENT

**AND
CRIMINAL APPEAL NO. 162 OF 2007**

WINFRED WAMBUI NYAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**AND
CRIMINAL APPEAL NO.163 OF 2007**

EPHANTUS NJEGA GEORGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**AND
CRIMINAL APPEAL NO. 164 OF 2007**

ELIAS GATIMU KUMUNGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**AND
CRIMINAL APPEAL NO. 165 OF 2007**

GEOFFREY MURIUKI MURAGE.....APPELLANT

J U D G M E N T

Criminal Appeals No. 161/07,162/07, 163/07, 164/07 and 165/07 were all consolidated and heard together as they emanate from the same trial. The 5 Appellants had been charged together with various charges before the Senior Resident Magistrate Kerugoya. After a full trial that lasted 5 years, they were found guilty and convicted on various counts and sentenced to 1 year imprisonment on each count which sentence was nonetheless to run concurrently. Being aggrieved by the conviction and sentence, they each filed separate appeals which as stated earlier were consolidated and heard together. They raised 10 grounds of appeal which I nonetheless find unnecessary to replicate for purposes of this Judgment. The learned state counsel conceded the appeal and I must say rightly so. I do not therefore need to re-evaluate the evidence tendered before the trial court as the appeal was conceded on a point of law. Among the charges facing the appellants before the trial court on which they were convicted were counts of forgery in counts II, and IV. In Counts 2, they were all

charged with ***“jointly with others not before court”*** with forging the signature of one ***“Mucira Kabutu”*** As rightly submitted by Mr. Magee for the appellants and conceded by Mr. Omwega for the state, it is not possible for several people to jointly forge a signature together. Did they hold the pen together? Did each forge part of the signature and left the other to finish it? Indeed even the evidence of the documents examiner did not attribute the questioned signature to any of the appellants.

This evidence was that the signature was not that of the account holder. That was not to say that the signature had been made or forged by any of the appellants. The conviction on the forgery counts was not therefore supported by any law or facts. The same is unsustainable.

On the other 2 counts i.e counts 3 and 5, as conceded by the learned state counsel, there was no documentary evidence adduced to show that any money was stolen by the appellants.

For these reasons, I find that the concession of the appeal by the state was proper and within the law. The convictions against all the appellants are unsustainable. This appeal therefore succeeds. I allow the same, quash the conviction on all the counts in respect of all the appellants and set aside the sentence imposed by the learned trial magistrate.

Delivered, signed and dated at Embu this 6th day of May 2010

W. KARANJA
JUDGE