



IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 515 OF 2009

(From Original Conviction and Sentence in Criminal Case No.2339 of 2006 of the Chief Magistrate's Court at Makadara).

PAUL NGUGI WAINAINA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appeal was argued on 12/5/10. Application for bail was abandoned. The Appellant was convicted for the offence of forgery making false document and uttering false documents sentenced to 3 years imprisonment. The grounds of appeals stated that the prosecution did not prove its case against the Appellant. There was not enough evidence to convict the appellant, the appellant did not utter false document when the evidence shows that people other than Appellant uttered the document the Trial Magistrate did not consider the appellant's defence, the Appellant was convicted on speculation and doubt. Trial Magistrate failed to address inconsistencies in prosecution's case as addressed in Appellant's submission.

Trial Magistrate failed to consider the final points of law regarding the making of the document and what is required to prove such a charge. Prosecution failed to adduce direct evidence to link the accused to the offence. Trial Magistrate failed to consider the unique and special circumstances of this case and pronouncing a harsh sentence.

The prosecution case was lead by PW1 James Patrick Treffey Forster a Gentleman residing in Muthaiga. In December 2006 he drove to Muthaiga Mini Market to meet a person who called him. The person jumped into his car. The man requested to be taken to a place in Park Road. There the man got out. PW1 gave him some money and he got out and said goodbye. That while at his home PW1 was told there was someone for him at the gate. The person was Paul the man at Muthaiga Mini Market. Paul was with another person. They had summons relating to Criminal Case No. 3816/06.

It was arranged with CID to get the man arrested and he was arrested. PW1 was not charged with the offence indicated in the document. The document was not true. Paul was the accused person. PW2 was the Police Officer who was found at CID Headquarters on 18/12/06 by PW1. He received a complainant with a letter purportedly written by a lawyer and a warrant of arrest.

The complainant handed the documents to the officer. The officer went to investigate genuineness of the warrant at the Chief Magistrate's Court Registry and was told there was no such warrant and no such case 3816/06.

The Appellant was arrested and his handwriting was picked and forwarded to handwriting examiner. The letter and warrant were produced. PW2 checked Appellant's identification card and confirmed he was the same person. There was Mary Njoki working at Chief Magistrate's Court Nairobi Criminal Registry. She received a warrant from police officer for Cr. Case No. 3816/06. On checking she did not find the case. Last entry for 2006 was 2365/06.

There was no cross examination by defence on this evidence. On submission on count I no expert testified.

With regard to count II there was evidence by PW1 that documents were taken by Paul and another. No evidence that Accused intended to defraud. There was delay of 5 days in presenting the Appellant to court. No reason for delay was explained. At this stage the accused was acquitted on Count 1.

He was put on his defence on count II and III. Paul Ngugi Wainaina was defending himself on count II and III. He said he met complainant for the first time in this court.

He placed himself at Norfolk Hotel where he was found by CID and arrested and was with complainant. He was arrested there 13.12.06 or 19.12.06?

He denied writing of demand. In never visited complainant's residence or presented any document to him as alleged.

Considering the evidence the investigation confirms the evidence and the prosecution case. I have considered the authorities cited by the Defence and I find the Trial Magistrate had given them proper consideration as comparing to the present case.

I am convinced that the prosecution case was supported by firm evidence and has been proved beyond reasonable doubt.

I find the appeal without merit and I dismiss the same.

Dated and delivered at Nairobi this 18th day of October 2010.

J. N. KHAMINWA

JUDGE