



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

Criminal Appeal 319 of 2009

**(From Original Conviction and Sentence in Criminal Case No. 857 of
2006 of the Chief Magistrate's Court at Nairobi)**

JORAM MESHAK MALAFU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with 7 counts in one charge sheet and was convicted on all of them. The counts are as follows:

Court 1 - Making Document without authority contrary to Section 357(9)

Count II – Similar charges

Count III - Similar charges

Count IV - Forgery of stamps C/o Section 352 (a)

Count V – Forgery

Count VI – Forgery of stamps.

The prosecution was represented by PW1 PC Abdi Noor Osman. On 9/5/07 he was conducting search of some suspects his colleagues

recovered a rubber stamp with a KRA label at Moroko Patrol base. We searched further and recovered 3 PSV.

- (1) PSV No. E208234.
- (2) PSV No G2 75953
- (3) PSV No G2 78997
- (4) Road Licence badge No. 3789 No. ORO 38218

The suspect was in the vehicle. They arrested and took him to Kamukunji Police Station. The suspect was the appellant. The rubber stamp was in his socks. The other documents were in his pockets.

PW2 was Lewi S. Lumuti who works with KRA Busia Insp. Otieno had visited office in Kitale on 13/6/06 requiring about our stamp. There are several discrepancies. PW1 is Peter Otaru. He said they were conducting searches. The vehicle KAQ 571E travelling to Western Province. I searched a young passenger in his socks. I recovered a rubber stamp with a KAR badge. Also recovered from his jackets 2 blank PSV licence for drug and one for conductor. PW3 arrested him on 5/5/06. PW4 works with KRA as revenue officer.

PW5 worked with KRA. PW6 worked with Government Printer publishing documents used by Government Departments. On 5/6/06 he confirmed by letter that the documents were not printed by Government Printer Exhibit 10 in the record. He was able to confirm because they had recorded several which did not appear in their records.

PW7 was a document examiner. PW8 was revenue officer who gave evidence. Thereafter the Appellant was called upon to defend himself.

Appellant gave unsworn statement and said on that date he was going home. There was a road block at Country Bus. They were ordered to alight. He saw an envelope on the ground he picked it and before he opened it he was arrested. Then the forged stamps were taken out he had been already arrested and taken to Moroto Patrol base and he was charged. He said he did not know who had dropped the stamps. He was convicted by Magistrate Bidali on 9/2/2009 and was sentenced by SPM Muketi. For sentence fine of Shs. 350,000/= in total.

I have considered that the evidence supporting prosecution is given by expert. Document examiners, handwriting examiners and that the appellant had no much to say except to place himself at the scene.

I find the prosecution conducted prosecution beyond reasonable doubt and I find the Appeal has no merit. The same is dismissed.

Dated and delivered at Nairobi this 7th day of October 2010.

J. N. KHAMINWA

JUDGE