



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 112 OF 2009

REUBEN KAGALI CHANGWEYA APPELLANT

VERSUS

REPUBLIC ACCUSED

JUDGMENT

The appellant herein brings this appeal on the grounds that he was tried on a defective charge which did not disclose any offence known to law and the facts did not support the charge. Additional grounds are that the proceedings were conducted in a language which the appellant did not understand and that the plea was equivocal and the sentence imposed severe.

What gave rise to the appeal is Eldoret Chief Magistrate's Criminal Case number 4121 of 2009 in which the appellant was charged under Section 357 (a) of the Penal Code with the offence of making a document without authority contrary to provisions of that section of the Penal Code. The facts were that the appellant on diverse dates between May 2008 and 23rd June 2008 at an unknown place with intent to defraud and deceive without lawful authority or excuse he made a certain document namely, driving licence serial number C 1236121 purporting it to be a genuine driving licence issued by the Kenya Revenue Authority. He pleaded guilty when the charge was read to him. The facts were then read out by the court that the appellant had met one Haroun Mwatia who was desirous of obtaining a driver's licence. The appellant told him that it would cost Mwatia Kshs. 5,500/= to get the document. Mwatia gave the complainant the money asked for, a copy of his identity card and two passport size photographs. The appellant went away and on 26/6/2008 he came back to Mwatia and handed him the driver's licence ref. C 1236121 in the names of Haroun Mwatia bearing class B, C & G and the said Mwatia commenced using the said document until 6/7/2008 when he went to KRA offices to renew his licence. The KRA officers found the document fake and arrested Mwatia who took them to the appellant as the person who had given him the driver's licence. The fake driver's licence was produced as an exhibit. Thereupon the appellant admitted those facts to be true. He was found to be a first offender and he was sentenced to serve three (3) years imprisonment.

The appellant's advocate now argues that as the place of offence and the person to be defrauded and/or deceived was not named nor was the source of the authority to be sought from stated, then that charge was defective. He said there was no known complainant as there is no one known as commissioner of motor vehicles as indicated on the charge sheet. He concluded by stating that the facts as given did not constitute criminal conduct. The state opposed the appeal.

I have on my part considered the grounds of appeal against the evidence at trial. On the onset let me note that the ground

on language was abandoned as nothing was said about it in Counsel's submissions. And perhaps that move was well advised as the appellant appears to have actively participated in the proceedings before court which the record notes were translated into Kiswahili. In the same regard the plea was clearly unequivocal, the appellant pleaded to it in the affirmative, accepted the facts when they were read to him and he mitigated giving his family as the reason the court ought to give him a lenient sentence. The bit about the real complainant appears totally misapprehended. The misnomer about the commissioner of motor vehicles in place of commissioner of road transport is clearly curable under S.382 of the Criminal Procedure Code. I order it cured. Under the Traffic Act the known officer is the commissioner of Road Transport and that was understood as such in the charge. In any event such naming of that officer was not shown to have occasioned any miscarriage of justice or prejudice to the appellant.

The appellant committed the offence he was charged with. He deceived Mwatia and made a fake driver's licence purporting it to have been made by KRA the only authority that makes driver's licences. The appellant admitted his offence in a most unequivocal manner. This appeal is without merit on that score.

The appellant states that a term of imprisonment of three (3) years was excessive as he was a first offender. The maximum sentence for the offence is imprisonment for seven (7) years. The court did take account of the fact that he was a first offender and that he did not waste the court's time but pleaded guilty. It must be for that reason that he was given three (3) years. That, he richly deserved. It was a fair sentence in the circumstances of the case.

For these reasons this appeal is totally devoid of merit and it is accordingly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF OCTOBER 2010.

P. M. MWILU
JUDGE

In the presence of:-

Appellant present in person

Keter holding brief for Kigamwa – Appellant's Counsel

Chirchir - Counsel for the State

Andrew Omwenga – Court Clerk

P. M. MWILU
JUDGE