REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA
Criminal Appeal 178 of 2008
HUSSEIN HASSAN ALI …….…….....APPELLANT
AND
REPUBLIC …….……..RESPONDENT
(Appeal from a judgment of the High Court of Kenya
Malindi (Ombija, J) dated 19th June, 2007
in
H.C.CR.C. NO. 34 OF 2007)
****
JUDGMENT OF THE COURT
The appellant was charged in the Resident Magistrate's Court at Lamu with two offences, namely being in possession of papers intended for making currency notes contrary to *section 367 (a)* of the Penal Code and also being in possession of ammunition without a firearms certificate contrary to *section 4 (2) (a)* as read with *section 4 (3) (a)* of the Firearms Act Cap 114 Laws of Kenya. The facts of the charge were that on 11th February, 2006 at Whitehouse bar and lodging within Mokowe area in Lamu District of Coast Province he was found in possession of three black carton papers intended to resemble and pass as a special paper used for making 1000 denomination of Kenya currency without lawful authority or excuse. At the same time he was found in possession of four (4) 9 millimetre ammunition without a certificate or any document authorizing him to have the same.

The appellant appeared in Court on 22nd February, 2006 before a Resident Magistrate, Mr. K. Bidali, where the two charges were read over to him. He admitted both of them and a plea of guilty was entered thereon. When the facts of these charges were narrated to the appellant by the prosecutor, he also admitted those facts whereupon a conviction was entered for the appellant on the two offences. The Court prosecutor then told the Court the appellant was a first offender and in sentencing him the Court stated:-
"Sentence:
Mitigation considered. Offence is serious. In count II minimum sentence is seven years imprisonment. On count I maximum sentence is seven years. On count I the accused shall serve two years imprisonment. On count II the accused shall serve 7 years imprisonment. R/A, 14 days."
The appellant's first appeal to the superior court was summarily rejected (Ombija J). The appeal before us is therefore the second and as such only points of law can be considered ***(section 361 (1)*** of the Criminal Procedure Code).
In his own home drawn memorandum of appeal dated and lodged in Court on 8th August 2007 the appellant listed four grounds of appeal which he reduced to three in a supplementary memorandum of appeal filed in Court on 11th November, 2008 but as no leave was sought and obtained to file this supplementary memorandum of appeal, only the original memorandum of appeal stands for this Court's scrutiny. All these grounds were hinged on the prescribed manner the sentence was meted upon him immediately after conviction without explanation and details about it, that the sentence was harsh, failure of the superior court to consider the grounds of appeal broadly and the impropriety of summarily rejecting the appeal under ***section 352 (2)*** of the Criminal Procedure Code.
When the appeal was placed before this Court on 26th January, 2009, the appellant handed in long written submissions but these had nothing to do with the grounds set out in the memorandum of appeal. Instead he submitted orally that he had been imprisoned at the young age of 20 year's and that he had been in prison custody for 3 years. He confirmed that

his plea of guilty was properly recorded and that he was only appealing against sentence. He pleaded for leniency because his motive for possession of the items was innocent.
Mr. Monda, Learned Senior State Counsel submitted that the appellant was a first offender and a young man, which factors the subordinate court took into account. He further submitted

that the superior court properly exercised its jurisdiction under ***section 352 (2)*** of the Criminal Procedure Code in dismissing the appeal which, according to him was only against the sentence.
The appellant's appeal to the superior court was based on his ignorance in pleading guilty to the charges read to him by the learned Resident Magistrate and the severity of the sentence. In general ignorance of the law affords no defence to a charge. ***Section 7*** of the Penal Code is clear on that. In any case the memorandum of appeal to the superior court did not disclose what the appellant was ignorant about. The language used during the proceedings was either English or Kiswahili in the presence of the clerk/interpreter called Bejah. The appellant did not complain about the language used or its interpretation. Given these circumstances, we are satisfied that the appellant's appeal to the superior court was properly dealt with under ***section 352 (2)*** of the Criminal Procedure Code since it was against the severity of the sentence, and the learned Judge was not inclined to interfere with it, See ***John Mwangi v. Republic*** [1983] KLR 652.
The appellant was convicted on his own plea of guilty. He is recorded to have answered *"it is true"* on each of the two charges read to him. In the case of ***Kato v. Republic*** [1971] EA 542, (Wicks C.J. and Travelyan J,) as they then were said:-
"the words "it is true" may not amount to a plea of guilty."
But then they went on to state:-
"We are of the view that the words "it is true" are a poor foundation for a conviction and they ought to be explored in all save the simplest of charges."
And in the case of ***Adan v. Republic*** [1973] EA. 445 the predecessor of this Court (Sir W. Duffus P., Spry V.P and Mustafa J.A) gave guidelines on how a plea of guilty and conviction of an accused person should be recorded by the trial court; emphasising that after the plea of guilty has been entered, the court should explain the facts of the alleged charge to the accused who should then be asked whether or not he admits them. If he does not deny them, a conviction may be entered against him. In the case subject to this appeal, the trial court record shows that after the plea of guilty was recorded, the facts of the offence were narrated to him by the prosecutor and recorded by the court to which he answered:-
"the facts are correct."

The trial magistrate then recorded:-
"Plea of guilty was unequivocal. Accused convicted on his own plea of guilty on both counts I and II."
The appellant was given a chance to mitigate before being sentenced as stated before. In our view, the appellant's plea was unequivocal and the superior court properly summarily rejected his appeal.
As stated earlier, the learned trial Magistrate sentenced the appellant to two terms of imprisonment without any direction as to whether those sentences shall run concurrently or consecutively. In effect the appellant would serve 9 years imprisonment. ***Section 14 (1)*** of the Criminal Procedure Code provides as follows:-
"14. (1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently."

The appellant in this case was tried and convicted on two counts under the same charge and we think it was appropriate for the learned trial Magistrate to direct that the punishment shall run concurrently. We direct that the sentences do run concurrently and to that extent only interfere with the sentence.
The appeal is otherwise devoid of merit and we order that it be and is hereby dismissed.
Dated and delivered at MOMBASA this 30th day of January, 2009.
P. K. TUNOI
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P. N. WAKI
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I certify that this is a true copy of the original.
DEPUTY REGISTRAR
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DEPUTY REGISTRAR