

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 57 of 2007

DANIEL JUMA MUKWEI:.....ACCUSED

VERSUS

REPUBLIC:.....RESPONDENT

(From the original conviction and sentence of CM'S CR,CA,BI,4035 OF 2004 BY G.A. MMASI (SRM))

JUDGEMENT

The appellant ***DANIEL JUMA MUKWEI*** was jointly charged with ***SAMSON SIMWA MIUSIKO*** the appellant in Eld. HC.CRA.NO.56 OF 2007 for the offence of being in possession of fake currency contrary to section 359 penal Code in that on 22nd May 2004 at Turbo Trading Centre jointly were found in possession of 500 notes knowing them to be forged. They were found guilty and jailed for five years.

The two appeals arises form the same case – Eld. CM.CR.NO.403 OF 2004. Ideally the two should have been consolidated for hearing but due to a mix up they were not. However the state counsel adopted his submission in this appeal to that of No.56 of 2004 and this judgment therefore applied to both.

Mr. Chirchir the learned state counsel told the court that he was conceding to the appeal as the amended charge sheet was never read to the appellant.

I have considered the evidence and I quite concur with the learned state counsel. It seems that the charges were amended on 18th January 2005 but they were never read to the appellant. Infact it was not even clear if the amendment was allowed but from the evidence it is quite clear having proceedings on basis of the amended charge sheet. Appellant never pleaded to those new charges and this was unprocedural and not curable.

In the circumstances I allow the appeals, quash the conviction and set aside the sentence imposed.

Dated and Delivered at Eldoret on 7th March,2008.

KABURU BAUNI

JUDGE

IN THE PRESENCE OF:-

C/C - David

Mr. Chirchir for State.

Appellants present in person.