

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 181 OF 2007

JOHN NDUNGU KIRUNYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

JOHN NDUNGU KIRUNYA, the Appellant was with four others charged with being in possession of papers intended to resemble and pass as currency notes contrary to Section 367A of the Penal Code. The particulars of the charge were that on 9th July 2006 at Nyahururu Township in Laikipia District within Rift Valley Province, the Appellant was, jointly with four others found in possession of 481 papers which were intended to resemble and pass as KShs.1,000/- currency notes.

They all denied the charge and while the case was pending for hearing the first and fifth accused persons absconded and the charge against them was withdrawn under Section 87A of the Criminal Procedure Code. The case proceeded for hearing against the other accused persons and after full trial before the Resident Magistrate at Nyahururu they were convicted and sentenced to three years imprisonment. The Appellant has appealed against that conviction and sentence.

The Appellant's short submissions were that he was not arrested in Room No. 24 at Space Haven Hotel at Nyahururu as alleged by PW1 and PW2. According to him he was arrested while playing pool at that bar. He also raised the constitutional issue of being held for more than 24 hours before he was taken to court. He said he was arrested on the 9th July 2006 and held for 96 hours before he was taken to court on the 12th July 2006.

In his submissions, Mr. Mugambi, learned state counsel contended that the Appellant was arrested in Room No. 24 at Space Haven Hotel and not while playing pool as he claims. Regarding the delay in taking him to court he submitted that the same was caused by the time it took to examine the papers that were found with the Appellant and his confederates. He urged me to dismiss the appeal both on conviction and sentence.

I have considered these submissions and carefully read the record. Starting with the issue of delaying in taking the Appellant to court, I am satisfied that the delay was caused by the examination of the papers to ascertain whether or not they were genuine or fake currency notes. Moreover, the 9th July 2006 was a Sunday so the delay in taking the accused to court was only one day which, as I have said, was a reasonable period that the police had to arrange to have the papers examined as to whether they were genuine or fake currency.

From the evidence of PW3 there is no doubt that the papers found were intended to pass as currency notes. The Appellant does not raise any issue on that. His complaint is that he was not among the people found with those papers in Room 24 at Space Haven Hotel in Nyahururu.

Having carefully examined the evidence of PW1 and PW2, I am satisfied that the Appellant was indeed found in that room. There is no reason given why the two witnesses would have preferred the charges against the Appellant if he was not found in that room. The Appellant does not say that any of the other

people he was charged with were also arrested from the bar and not from that room. He does not himself give any reason why the police would pick on him. In the circumstances I find no merit in this appeal and accordingly dismiss it.

DATED and delivered at Nakuru on this 10th day of July of 2008.

D. K. MARAGA

JUDGE