

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 131 of 2005

GODFREY NJENGA KIBE.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeal against the conviction and sentence of Martha Mutuku, Ag. Resident

Magistrate, in the Resident Magistrate's Criminal Case No. 610 of 2004 at Othaya)

JUDGMENT

The Appellant was convicted of uttering counterfeit coin contrary to *Section 372* of the Penal Code. On being convicted the Appellant was sentenced to two years imprisonment. He was dissatisfied with his conviction and sentence and therefore filed the present appeal. The evidence that was tendered by the prosecution was as follows: P.W. 2 an operator of Mdudu Bar on the 14th December 2004, was paid by the Appellant Ksh.1000/= for the purchase of 2 Guinness beer. He gave him change of Ksh.730/=. The Appellant requested again for two more beers and again tendered for payment with Ksh.1000/=. P.W. 2 asked him for the loose change he had given him but the Appellant stated that he had given it to someone else. The two Ksh.1000/= notes bore the same serial number AH3908528. It was not until the following day that P.W.2 discovered that the notes were fake. He stated that at the close of the business day he only had the two notes of Kenya

1000/= and lose change. P.W.3 confirmed the evidence of P.W.2 because he stated that P.W.2 left him with that day's takings in order to purchase more beer for the bar. The evidence of P.W.3 was that it was the person who was delivering the beer who discovered that the notes were fake. P.W.4 is also an owner of a bar called Riverside. The Appellant went to his bar in the company of two other people. The Appellant asked for Allsops beer and in payment tendered to P.W.4 Ksh.1000/=. He made other purchases of beer later on. P.W.4 said that the note given to him by the Appellant was serial number 4577123 (AW). He later discovered that that note was a forgery. P.W.5 and P.W.6 were the persons who accompanied the Appellant to the bar of P.W.4. They were able to confirm that the Appellant paid P.W.4 a note of Ksh.1000/=. P.W.7 a Police Constable gave evidence of the search carried out at the home of the Appellant. During that search they were able to retrieve a Kenya Shillings 1000/= note with the serial number AH6844940. P.W. 1 is a document examiner. He said that he works at the document examination lab at the C.I.D. headquarters. He confirmed receiving the notes mentioned hereinbefore and he stated that they were not genuine notes. On examination he found that the notes were poor in colour and quality. They also did not have the water mark and the security thread. The Appellant on being found by the lower court that he had a case to answer gave a sworn statement. He stated that on 13th December 2004, after sowing timber between Kiambu and Murang'a he took that timber to Gikomba and sold it. On 14th December 2004, he was at P.W.2's bar and he confirmed that he paid him with one Ksh.1000/= note. It was three days after that that Police came to his residence and proceeded to carry out a search. He then alluded to a grudge between him and P.W.2. It is note-worthy that the Appellant did not cross-examine P.W.2 at all. He therefore did not put any question relating to the said grudge to that witness. In respect of P.W.4, in cross-examination the Appellant said that he only paid him Ksh.200/=. The Appellant also during his testimony raised a query on the alterations in the O.B. on the day of his arrest. Because of that query P.W.7 was recalled. He confirmed that he had done the entry in the O.B Book and that he had not done any alteration to it. That ordinarily any alteration in the O.B Book is signed for. He confirmed that the alterations which had been queried by the Appellant did not have a

signature.

I have reconsidered the evidence of the Appellant. As stated before he did not cross-examine P.W.2. It is therefore taken that he accepts the evidence tendered by him. The evidence of P.W.2 was supported by P.W.3. Further the evidence of P.W. 4 is confirmed by P.W.5 and 6. I am of the view that that evidence was sufficient to sustain the charge against the Appellant. Further the evidence of P.W.7 on the search carried out at the residence of the Appellant is also sufficient and meets the standard of proof in a criminal trial. I therefore find that the Appellant was rightly convicted of the offences before him by the lower court. The Appellant was sentenced to two years imprisonment and I cannot find any reason to upset that sentence. Accordingly the Appellant's appeal is hereby dismissed.

Dated and delivered at Nyeri this 28th day of September 2007.

MARY KASANGO

JUDGE