

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Criminal Appeal 154 of 2003

(From original conviction and sentence of the SRM's court at Homa Bay in criminal case No. 12 of 2001.)

ROBERT OSANO APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT:

The appellant was convicted by Senior Resident Magistrate Homa Bay for the offence of operating a business without a licence contrary to s.163 of the Local Government Act.

Particulars were that on 25th October 2001 at were he was found operating a private school and private hospital without a single business permit contrary to s.163 of the Act.

Prosecution evidence was that on 25.10.01 Dickson Martin Jaoko (PW1) a Revenue officer with Homa Bay council visited Ndhiwa market. He was with George Mango Ochanda (PW2) an enforcement officer. They found the appellant operating a secondary school, and a clinic with wards, outpatient wing and a mortuary. He had no permit from the council. He was therefore charged and bonded to appear in court.

In defence the appellant stated that he was the director of Institute for rural Development an N.G.O. situated in Ndhiwa. It was found in 1971 and registered as a self help group but later was registered as a private company. In 1993 it was registered as an N.G.O. He said it was not a profit making body and do not require a business permit. He admitted that they provided Health facilities and a mortuary. He said they used to run a school but it was closed in the year 2001. He said he was not the owner of the institute.

There was no dispute that the appellant was running a medical facility though he said it belonged to an N.G.O. However the evidence of PW1 was very candid. He said he found appellant operating a school, a clinic and a mortuary. He talked to the appellant. He had talked to him about the licence even before that. He said the school was not for the community. There was nothing to show that the hospital was run by a N.G.O. If this was so they should have sought an exemption from the council from paying licence. A N.G.O. could not have set up a community hospital and school without the county council's knowledge. The appellant was the one found running the two institutes as PW1 testified. True he could have registered as N.G.O. but it was not the N.G.O. running the institute. The magistrate therefore reached a proper finding that the appellant had not paid for the permit. He believed the evidence of PW1 and there is nothing to show that PW1 did not tell the truth.

In the circumstances the appeal has no merit. It is dismissed with costs.

Dated 4th May 2005

KABURU BAUNI

JUDGE

Cc Auma

Mr. Kemo for state

Appellant and counsel absent

KABURU BAUNI

JUDGE