



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 458 of 2003

(From original conviction and sentence in Criminal Case No. 2266 of 2003 of the

Principal Magistrate's Court at Nyahururu – Mr. K. A. Owuor)

DANCAN NJOGU KIAMBATI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant has appealed against the original conviction and sentence in **Nyahururu Criminal Case No. 2266 of 2003**. In that case, the Appellant had been charged for the offence of possession of forged Bank note, contrary to **Section 359 of the Penal Code**.

The facts of the prosecution case as stated in the Charge Sheet are as follows:

“On the 30th June, 2003 at Karandi Trading Centre in Laikipia District within the Rift Valley Province without lawful authority or excuse had in his possession one 500 forged Kenya currency note Serial No. AH6844940 knowing it to be forged.”

After a full trial, the Appellant was found **“guilty”** and convicted accordingly. Consequently, the learned Magistrate viz, Mr. Kennedy Owuor, then Resident Magistrate sentenced the Appellant to 3 years imprisonment.

During the hearing of the appeal, the Appellant recalled that on 30th May, 2003 he went to **Karandi Trading Centre** where he asked for a change of Kshs.500 and later went to do some shopping. However at around 3.00 to 4.00 p.m., the complainant pursued him and complained that he had given him a forged note. On the following day, the Appellant was arrested and a search was conducted in his house. The Appellant was categorical that he never had a forged note.

On the other hand, the State through **Mr. Gumo**, Assistant Deputy Public Prosecutor supported both the conviction and sentence. According to Mr. Gumo, the Kshs.500 note was established to have been fake by the Document Examiner. He further submitted that the complainant gave out the change in good faith without any prior knowledge that the same was fake. The note was only detected to have been fake by the bread salesman. Apart from the above, Mr. Gumo submitted that the Appellant was dishonest because he denied having given the complainant any money.

This Court has carefully perused the above together with the record of appeal. Being the first Appellate Court, I have the duty and obligation to evaluate the evidence afresh and reach my own conclusions. The

evidence of the PW1 –**John Kanguru Kanaa** clearly show that on the material day at around 10.00 a.m. while he was waiting to buy bread, the Appellant approached him and requested for a change of Kshs.500. The PW1 took the Kshs.500 note from the Appellant and gave him five Shs.100 notes. After about an hour, the lorry that was distributing bread came and the owner of the lorry detected that the Kshs.500 note was fake.

Immediately, the complainant started looking for the Appellant whom he only traced at around 5.00 p.m. in his home. When the Appellant denied having given the complainant the fake note, the latter went and reported the matter to Sheria Police Station.

In his evidence, the PW2 – **PC Dominic** duly stated how he had received the report from the complainant and how he caused the arrest of the Appellant. The PW2 also explained how he prepared the Exhibit Memo Form and sent the fake note – Ex.1 to the Document Examiner. Subsequently, he received the report that confirmed that the note was fake.

The PW3 – **P.C. Julius Akinda** confirmed and corroborated the story of the PW2. When the Appellant was put on his defence, he opted to keep quiet. That was perfectly within his rights. Having perused the above evidence carefully, I hereby find that the same was overwhelming against the Appellant. The transaction between the complainant and the Appellant took place in broad daylight at around 10.00 a.m. The complainant was very clear in his mind that he was given the fake note by the Appellant whom he started searching for within an hour. Over and above that, there was no evidence that the complainant had any grudge whatsoever against the Appellant. Given the above, I am satisfied that the learned Magistrate evaluated the evidence correctly and reached a proper decision. In view of the above, I hereby find that the conviction is safe and well-merited. Due to the above, I hereby uphold the conviction.

As far as the sentence is concerned, the maximum is 7 years imprisonment. The Appellant was sentenced to 3 years imprisonment. He had already served 1 year and 9 months. Since he has already learnt his lesson, the sentence is hereby reduced to the period already served. It is only to that extent that the appeal succeeds.

The Appellant should be released forthwith unless held lawfully. Those are the Orders of the Court.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of the Appellant and

Mr. Njogu, State Counsel.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005