

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 145 of 2003

PETER MWAURA NDUNGU APPELLANT
VERSUS
REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in Senior Principal Magistrate's Court at Murang'a in Criminal Case No. 1345 of 2002 by Mr. G. K. Mwaura – S.R.M. – Murang'a)

J U D G M E N T

Peter Mwaura Ndungu (hereinafter referred to as the appellant) was tried and convicted by the Senior Resident Magistrate's court in Murang'a for the offence of possession of forged currency note contrary to section 359 of the Penal Code. He was sentenced to serve 5 years imprisonment. He has now appealed against his conviction and sentence.

I have reconsidered and evaluated the evidence which was adduced against the appellant. It is common ground that the appellant went to Wangerere Bar and Restaurant in Murang'a, ordered drinks and paid with a Ksh.1,000/= note.

Salome Tatwa Masumba who was serving at the Bar and Francis Wanjohi Nganga who was a manager at the Bar both swear that the note produced by the appellant was serial No. AA2406796 which was confirmed by P.C. Samuel Njoroge through the document examiner to be a forged currency.

In his defence the appellant maintained that the money he produced was not the one alleged to be the forged currency. It is evident that the evidence adduced by P.W.1, 2, 3 and 4 was sufficient to establish the case against the appellant. The trial magistrate who saw the witnesses and assessed their demeanour believed the prosecution witnesses and not the appellant. I have no reason to fault him. I am satisfied that the conviction was well supported by the evidence on record.

As regards the sentence, the appellant who was treated as a 1st offender was sentenced to serve 5 years imprisonment when the maximum provided is 7 years imprisonment.

It is apparent that the sentence was manifestly excessive and requires the intervention of this court. The appellant has already served 2½ years imprisonment. In my view that is sufficient punishment.

I would therefore dismiss the appeal against conviction but allow the appeal on sentence and set aside the sentence of 5 years imposed on the appellant and substitute it therefore with a sentence equivalent to the period already served.

Those shall be the orders of this court.

Dated signed and delivered this 30th day of November 2005

H. M. OKWENGU

JUDGE

