



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL APPEAL NO.261 OF 2003**

(From original conviction and sentence in Criminal Case No.159 of 2003 of the Resident Magistrate's Court at Kehancha – J. O. OCHAKO, ESQ., R.M)

**SIMON MAGORO OGUNDA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was convicted by the Resident Magistrate Kehancha for the offence of being in possession of forged bank notes c/s.359 of the Penal Code. He was sentenced to 3 years imprisonment.

The particulars were that on 17th April 2003 at Nyamohanga Market in Kuria District he was found in possession of 63 shs.1000/- Kenya Currency notes which were not genuine.

In his appeal the appellant submitted that the charge was a frame up. He was arrested for trying to enter Tanzania without a passport. He said he was going to buy Omena and had shs.250,000/= genuine Kenya Money in a traveling bag. This money was taken by Police and was never returned to him together with the bag.

The appeal was opposed and court told that the conviction was proper. I concur with the State Counsel that the evidence in the lower court was overwhelming. PW1 P. C. GISIRI WANDE who arrested the appellant told the court that he was tipped by an informer and he arrested the appellant. He was with A. P. C. PETER KIPCHUMBA CHERUIYOT of Administration Police. On arresting the appellant they searched him and found 63 shs.1000/- Kenya Currency notes. 26 of them had the same Serial Number AC5371053, 34, Serial No.AB 3379967 and three No.AE1527526. On usual check they noted they were not genuine. They took appellant to police Station. The fake notes were taken to Government Analysts who confirmed they were not genuine. The prosecution had no obligation to call the informer as a witness. The two witnesses were very consistent in their evidence.

The magistrate was right to reject appellant's defence that his shs.250,000/- was taken from him. He never raised that issue at the police station. He first appeared in court on 30/4/03 and he never told court that his shs.250,000/= was taken by the police. He himself applied for bond. Thereafter there were several mentions before the hearing started on 1st July 2003. During those mentions he did not raise the issue with court.

I therefore find the conviction of the appellant was proper and I uphold the same.

As to the sentence appellant was sentenced to 3 years imprisonment. He was a first offender and pleaded for leniency. Sentence of 3 years was excessive in the circumstances. I therefore set aside the sentence of 3 years and substitute it with one of 18 months (Eighteen months) imprisonment.

It is so ordered.

**KABURU BAUNI**

**JUDGE.**

**21/7/2004**

Delivered on 21st July 2004

**KABURU BAUNI**

**JUDGE.**