

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.535 OF 2000

(From Original Conviction and Sentence in Criminal Case No.3370 of 2000 of the Chief Magistrate's Court at Mombasa –A. W. Ngugi, Ms –R.M.)

SIMON MAINA KAMAU.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGMENT OF COURT

The Appellant was originally charged with the offence of altering a document with the intention to deceive, contrary to s.357(b) of the Penal Code. He was unfortunately for him discovered and charged. He was convicted and sentenced to 4 years imprisonment. The trial Magistrate appears to have taken into account the mitigating factors recorded in the Appellant's favour before she sentenced. She however had felt that the offence was of a serious nature which needed a deterrent sentence. If the Appellant was not discovered he would have ended deceiving the licensing officers that he was a qualified driver. Indeed in court the Appellant in arguing his appeal indicated that although he was a driver, he has never been tested by the licensing body and given a licence.

He has never satisfied the examiners and therefore never attained the competency required under the law. This court is not barred also from taking a judicial notice of the many motor accidents taking place along our roads due to the incompetence of the drivers.

It is my view that the trial Magistrate was entitled to regard the offence as of a serious nature. The maximum punishment allowed is 7 years. She gave out 4 years. She took into account all the circumstances. She broke no sentencing principles. I see no reason to interfere with the sentence meted out to the Appellant which I hereby confirm.

The appeal is dismissed.

Dated and delivered at Mombasa this 7th day of May, 2002.

D. A. ONYANCHA

J U D G E