



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE

CRIMINAL APPEAL NO.508 OF 2000

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.824 of 1997 of the Chief Magistrate's Court at Mombasa – G. Katasi –

GABRIEL KARANI MWAZAME APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was convicted and sentenced on two charges of forgery contrary to Section 349 of the Penal Code. He now appeals against conviction and sentence.

He complains that the offences were not proved beyond reasonable doubt and that the forgery charge was defective and that evidence was insufficient and scanty, and that his defence was not considered and that he was not given a chance to call his witnesses, and finally the sentence is harsh and excessive in the circumstances.

On the issue of his not being given a chance to call his witness I notice he was explained the provisions of Section 211 C.P.C. and he chose to give unsworn evidence. This was on 13.9.2000. Judgment was not delivered until 3.10.2000. He never asked time to bring his witnesses if any. He did not mention he had witnesses to call. I find the trial magistrate did not hurry up the judgment and this complaint has no basis.

On the issue of his defence the appellant did admit that he had reached an arrangement with the complainants to act as an insurance agent for them. He said –

“I processed the insurance certificates, we used to sit every month, work out commissions and share it” They did not bother to find out from me about insurance covers I have given them. I had given out insurance covers as per their applications.”

In fact the actual covers he gave the complainant, PW.1 Ali Salim Bates for Motor vehicle KAG 170M, the policy was recorded as for taxis which carried 4 passengers, but the certificate of insurance had been changed to read “16” passengers instead of 4 passengers. Again the cover for motor vehicle KAG 364G was for a taxi carrying 4 passengers, but certificates given to the complainant Omar Subwano was altered to read “16” passengers.

To these charges the appellant said:-

“I do not know who made the changes on the certificates. This is a mystery to me”

There is evidence that the complainants were matatu owners not taxi drivers. It is clear that the Appellant knew he was dealing with Matatu vehicles and not taxis. He knew the policies required were for 16 persons not 4 persons. As a qualified insurance agent he knew what he was doing. He arranged for insurance for 4 passengers and altered the certificate to read 16 passengers. He therefore committed forgery. It is not true to state that the Trial Magistrate did not consider the defence. She took into consideration everything and acquitted the appellant of the other charges facing him.

The other issue is that of convicting on scanty and insufficient evidence. I have already stated that the Appellant himself admitted several points on the prosecution cases thus supporting the prosecution. The evidence of PW.1 and PW.2 – the owners of the insured vehicle is straightforward and I am satisfied the Trial Magistrate convicted on sufficient evidence.

On the issue of sentence I note the maximum sentence for the offence is imprisonment for a period of three years. In this case the trial magistrate applied the maximum punishment. The appellant is said to be a first offender. The appellant showed remorse in his mitigation. I am of the view that in the circumstances the Trial Magistrate failed to consider mitigating factors and the need to give the offender opportunity to reform.

I therefore find the maximum sentence given harsh and excessive. I uphold the conviction but set aside the sentence of 3 years imprisonment on each of the two counts and substitute the same with imprisonment for a period of 18 months for each count. The imprisonment to commence from date of conviction, and to run concurrently.

Dated at Mombasa this 28th Day of November, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in present of State Counsel Ms. Kwena and the appellant.

J.KHAMINWA

COMMISSIONER OF ASSIZE