



**Maghenyi v Republic (Criminal Appeal E100 of 2024)
[2025] KEHC 2197 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2197 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E100 OF 2024
DR KAVEDZA, J
FEBRUARY 13, 2025**

BETWEEN

MESHACK MZAEH MAGHENYI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. I.M Kabuya (SPM) on 11th September 2024 at Kibera Chief Magistrate's
Court Criminal Case No. E774 of 2022 Republic vs Meschack Mzaeh Maghenyi)*

JUDGMENT

1. The applicant was charged and after a full trial convicted for the following offences: Three Counts of making a document without authority contrary to section 357(a) of the [Penal Code](#) and three counts of uttering a document with intent to defraud contrary to section 357(b) of the [Penal Code](#). He was sentenced to pay a fine of Kshs. 200,000 on each count in default to serve 12 months imprisonment.
2. Being dissatisfied, the applicant filed an appeal challenging his conviction and sentence. In his appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He challenged the charge sheet relied upon as being defective. That the trial court failed to consider defence. He urged the court to quash his conviction and set aside the sentence imposed.
3. This being the first appellate court, we are guided by the ruling in *Okeno v. R* [1972] EA 32. In this case, the court opined that a court of first appeal ought to re-examine all the evidence afresh and in an exhaustive manner, so as to come up with its own conclusions without overlooking the conclusions of the trial court, bearing in mind that it never saw the witnesses testify.
4. The prosecution's evidence before the trial court was as follows: Jimmy Omari (PW1), a car dealer, testified that on April 1, 2022, while in Mombasa to clear a vehicle, he met the appellant at a hotel. During their conversation, the appellant, also a car dealer, requested PW1 to purchase a Toyota Land



- Cruiser (chassis no. TRJ150-0050777) on his behalf for USD 28,000, citing financial constraints. The appellant provided importation documents, including a bill of lading with redacted names, claiming it was to protect his clients' identities. He also sent a copy of the vehicle's logbook.
5. Subsequently, the appellant forwarded an invoice from Japan, and on April 12, 2022, USD 28,000 was deposited from Profin Investments' account, with the appellant confirming receipt. The appellant assured PW1 that all remaining documentation would be finalized by April 19, 2022. However, the appellant began giving excuses, leading PW1 to realize on April 20, 2022, that no vehicle existed and he had been defrauded. He reported the matter to Langata Police Station, resulting in the appellant's arrest on April 27, 2022.
 6. During cross-examination, PW1 admitted that the bill of lading listed TNT Japan as the owner. He also conceded that there was no formal sale agreement with the appellant and that payment was made directly to TNT Japan. He stated that he had negotiated with a broker named Faraz.
 7. Peter Mugambi (PW2), an employer of PW1, confirmed that he deposited USD 28,000 in a Japanese bank upon PW1's advice following a successful sale. However, the appellant, acting as an agent, failed to deliver the vehicle. Attempts to recover the funds through the bank were unsuccessful. Under cross-examination, PW2 admitted he was unsure whether PW1 was also in the car business but stated that PW1 fully engaged the appellant. He clarified that Profin Investments, not himself, was listed as the buyer, though he was a director of the company. He acknowledged having a claim against the appellant, as his name appeared on the pro-forma invoice. However, he did not verify the authenticity of the documents, as he saw no reason to doubt them.
 8. Investigating officer CIP. Opiyo (PW3) of DCI Langata testified that PW1 reported the case, alleging that the appellant falsely claimed he could sell the vehicle, leading to a loss of USD 28,000. PW3 reviewed the transaction's documents and found them to be forgeries designed to deceive PW1. The appellant was arrested on April 27, 2022, and charged.
 9. During cross-examination, PW3 denied maliciously charging the appellant despite differing views from the OCS Langata. He stated that the appellant's wife provided supporting documents and denied allegations of harassment, including retaining the appellant's mobile phones. While the appellant shared his communication with Faraz, PW3 noted that no forensic examination was conducted. He confirmed that the stolen funds could not be recovered as they had been withdrawn. Furthermore, he denied allegations that PW1 had swindled PW2 and was falsely implicating the appellant.
 10. The appellant testified in his defense, stating that he was a car dealer like PW1 and had merely provided Faraz's contact after PW1 expressed interest in purchasing a vehicle. He claimed that Faraz independently dealt with both himself and PW1 and that they were both victims of fraud. However, their joint efforts to resolve the matter were hindered when PW1 began suspecting him of involvement. He asserted that the WhatsApp messages presented in court did not originate from his phone and accused PW3 of conspiring with PW1 to fabricate charges against him.
 11. Under cross-examination, the appellant acknowledged having a daughter named Jael but denied that the WhatsApp messages with PW1 contained any reference to her. He also denied sending PW1 photographs of the vehicle and maintained that all communication was solely between PW1 and Faraz. He refuted claims that he was to receive a USD 300 commission from the transaction.
 12. I have considered the evidence and the submissions on record. I find that the issue in this appeal is whether the prosecution proved their case beyond reasonable doubt.



13. Counts II, III, and IV, the appellant was charged with the offence of making a document without authority contrary to Section 357(a) of the Penal Code. It provides as follows:

“ Any person who, with intent to defraud or to deceive—

- (a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing;”

14. The elements of the offence require that there is proof that the accused person(s) made, signed, or executed the document in issue in the name of or on account of another person. As already noted, the evidence of the act was availed by the prosecution.

15. In *Dennis Binyenya v Republic* [2018] eKLR Ngenye, J (as she then was) was satisfied that the offence under Section 357(a) had been proved in a case where the appellant had presented a KSCCE certificate that had been forged. The learned Judge set out the ingredients of the offence as follows:

“ 27. From the definition, the offence constitutes the following ingredients;

- i. proof of the making, signing, or execution of a document and that the same was done by the accused,
- ii. proof that the making, signing, or execution was without lawful authority or excuse and
- iii. proof that the making, signing and execution was with the intention to defraud or deceive.

She then explained her reasoning:

28. It was clear that the Appellant was a candidate during the 2003 KCSE examinations and he was therefore not authorized or was in a position to issue his own certificate. From the particulars of the offence [it] was not disclosed where the certificate was made and with whom the Appellant had produced the certificate. But it is doubtless that the certificate was received from the Appellant and submitted for purposes of his recruitment to join the disciplined forces. The same was thereafter forwarded to the Kenya National Examinations Council for verification. At the Council, the document was found to differ from the information produced by the Council leading to the conclusion that the grades in the individual subjects as well as the mean grade were altered. Undoubtedly then, the certificate held false information regarding the grades attained by the Appellant as can be clearly seen from comparing them with the grades apparent in Exhibit 3. This alteration of the results meant that the certificate was not a genuine document. This leads to the inference that the Appellant was either involved in the alterations or procured the making of the alterations.

16. It was the prosecution’s case that the appellant made a bill of lading no. YDB-231-0139, YDB-151-0915, and a Kenya Bureau of Standard (KEBS) Certificate No. QISJ/KOB/RW1-22675 with the intention to deceive and without lawful authority. The key evidence supporting this claim included official letters from relevant authorities confirming the documents’ fraudulent nature. A letter from Diamond Shipping Services Limited, dated June 5, 2022, stated that the bills of lading were



fake and had not been issued by them. Similarly, a letter from KEBS, dated May 30, 2022, confirmed that the certificate in question was not genuine and had not been issued for the subject vehicle.

17. The appellant's connection to these documents was established through his role in the transaction. He provided PW1 with the fraudulent documents, leading PW1 and PW2 to believe the vehicle purchase was legitimate. The pro-forma invoice used in the transaction listed the appellant as the account manager, directly linking him to the scheme. PW2, acting on these documents, transferred USD 28,000, which the appellant later confirmed receiving. The investigating officer (PW3) testified that the appellant could not explain the origin of the documents, nor did he provide evidence that he obtained them from a legitimate source.
18. Furthermore, the appellant did not offer a credible defence to counter the prosecution's claims. While he argued that he was also a victim of fraud, he failed to provide any independent evidence supporting this assertion. His inability to justify his possession of the forged documents, coupled with his direct involvement in the financial transaction, led the prosecution to conclude that he knowingly participated in the fraudulent scheme. Thus, the evidence against him was based on the fraudulent nature of the documents, his role in presenting them, the financial loss incurred by PW2 as a result, and his failure to offer a plausible alternative explanation. The evidence was therefore adequate to prove the ingredients of the offences in counts II, III, and IV. The conviction in those counts is affirmed.
19. In Counts V, VI, and VII, the appellant was charged with uttering a document with intent to defraud contrary to section 357(b) of the *Penal Code*.
Making documents without authority Any person who, with intent to defraud or to deceive—
 - (a)
 - (b) knowingly utters any document or electronic record or writing so made, signed or executed by another person, is guilty of a felony and is liable to imprisonment for seven years.
20. The elements of the offence require that there is proof that the accused person(s) made, signed, or executed the document in issue in the name of or on account of another person.
21. The appellant knowingly presented forged documents, including bills of lading (Nos. YDB-231-0139, YDB-151-0915) and a KEBS certificate (No. QISJ/KOB/RW1-22675), to deceive PW1 and PW2 into believing the transaction was legitimate. These documents, later confirmed as fake by Diamond Shipping Services Limited and KEBS, were used to induce PW2 to transfer USD 28,000. The pro-forma invoice listed the appellant as the account manager, linking him to the fraud. The investigating officer (PW3) confirmed the documents' fraudulent nature, and the appellant failed to provide a legitimate source. His continued use of these falsified documents to mislead PW1 and PW2 proved his intent to utter false documents without lawful authority. The appellant's conviction was therefore proper and is affirmed.
22. The appellant was sentenced to pay a fine of Kshs. 200,000 on each count in default to serve 12 months imprisonment. The cumulative sentence imposed was a fine of Kshs. 1,200,000 in default to serve six (6) years imprisonment. It is my finding that the sentence imposed was legal and there is no reason to interfere.
23. Consequently, the appeal against conviction and sentence is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 13TH FEBRUARY 2025



D. KAVEDZA

JUDGE

In the presence of:

Mutuma for the respondent

Kangethe for the appellant

Appellant present

Achode - court assistant

