



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL REVISION NO. E050 OF 2021

EDWARD MZEE KAREZI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

Coram: Hon. R. Nyakundi

Mr Mwangi for the State

R U L I N G

BACKGROUND

EDWARD MZEE KAMZI was on 28.6.2018 charged before her honour Ivy Wasike a Senior Resident Magistrate sitting at Malindi for the offence of obtaining credit by false pretence contrary to section 316(a) of the Penal Code. The brief particulars being that;-

COUNT I;-Obtaining credit by false pretence contrary to section 316(a) of the Penal Code.

Particulars;-On 22.11.2016 at Malindi township in Malindi Sub-County within Kilifi County, accused incurred a debt to **JULIUS KAZUNGU CHARO**, obtained a credit of **Kshs.300, 000/-** from the said **JULIUS KAZUNGU CHARO** by falsely pretending that he was in position to pay the debt on 21/12/2016 a face he knew was false

COUNT II;-Issuing bad cheque contrary to section 316(A) sub-section (1) (c) as read with sub-section (4) of the Penal Code

Particulars;- On the 22nd day of November, 2016 at Malindi Township in Malindi Sub-County within Kilifi County issued cheque number 00022 for Kenya shillings 390,000/- to **JULIUS KAZUNGU CHARO** on Barclays bank account number 2036767777 when the said **EDWARD MZEE KAREZI** had instructed the bank not to honour the said cheque.

COUNT III;-Issuing bad cheque contrary to section 316A sub-section (1) (a) as read with sub-section (4) of the Penal Code.

Particulars;-On the 12th day of June, 2017 at Malindi Township in Malindi sub-county within Kilifi County, issued cheque number 00026 for Kenya shillings 500,000/= to **JULIUS KAZUNGU CHARO** on Barclays bank account number 2036767777 with the knowledge that the said Barclays bank account had insufficient funds.

COUNT IV;-Issuing bad cheque contrary to section 316A sub-section (1) (c) as read with sub-section (4) of the Penal Code.

Particulars;-On the 8th day of June, 2018 at Malindi Township in Malindi Sub-county within Kilifi County, issued cheque number 000016 for Kenya shillings 100,000/= to **JULIUS KAZUNGU CHARO** on KCB bank account number 1220438464 when the said **EDWARD MZEE KAREZI** had instructed the bank not to honour the said cheque.

The accused pleaded not guilty to the charges, therefore setting in motion for the state to prove the allegations beyond reasonable doubt. The trial apparently, despite the lapse of time has never commenced by way of summoning the prosecution witnesses. In an unprecedented judicial act, the Learned Trial Magistrate presumed that the prosecution had adduced evidence and closed its case against the accused. It is clear that a judgement date was scheduled by the session learned trial magistrate.

From the record there is no evidence of a trial held against the accused by the prosecution to warrant a tactical rebuttal from the accused.

The particulars of the record also demonstrate an accused released on bail with effect from 2.7.2018 but taken flight out of the jurisdiction of the Court.

At the time of the purported action by the Learned Trial Magistrate to pen down draft judgement with subsequent delivery, the record remained a mere shell in absence of any evidence adduced in support of the indictments. There is therefore an error apparent on the face of the record.

DETERMINATION

It is from these considerations the learned trial magistrate preferred the matter to the High Court pursuant to Article 165 (6) and (7) of the Constitution as read in conjunction with section 362 of the Criminal Procedure Code on supervisory and revisionary jurisdiction. In accordance to the provisions of section 362 of the Civil Procedure Code the impugned record has now been called for and perused within the scope of Article 165 (6), 87 of the Constitution and the aforesaid provisions of the Code.

In light of the true reflection of the record it is the court's view that there is total absence of regularity, propriety, correctness and justness of the proceedings to call upon any session magistrate to set in motion preparation of a judgement capable of meeting the test outlined under section 169 of the Criminal Procedure Code.

For those reasons, a writ of certiorari quashing the order therein providing that the prosecution and defence case had concluded for the learned trial magistrate to pronounce judgement on the merits against the accused person. Therefore the original file **Criminal Case No.569 of 2018** do revert back to the trial Court for hearing and determination.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF JUNE, 2021

.....

R. NYAKUNDI

JUDGE

In the presence of

Mr Mwangi for the State