



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CRIMINAL APPEAL NO.104 OF 2012

KEITH WANYAMA YAMAMUAPPELLANT

VERSUS

REPUBLICRESPONDENT

[Appeal from Original Conviction and Sentence from KISUMU CM'S Court: EZRA AWINO – SRM

in Criminal Case No.461 of 2009.]

J U D G M E N T

1. The appellant was charged with the following offence:

COUNT 1; PERSONATING CONTRARY TO SECTION 382 OF THE PENAL CODE:

KEITH WANYAMA YAMAMU: On the 28th November, 2009 at Amedo centre in Kisumu district within Nyanza Province with others intent to defraud falsely represented himself to be administration police officer.

COUNT 11 – OBTAINING BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE.

KEITH WANYAMA YAMAMU – On the 28th day of September, 2009 at Amedo Centre in Kisumu District within Nyanza Province with intent to defraud obtained from Amedo Center LG TV, home theatre, bicycle, DVD Sony all valued at Kshs.114,970/= by falsely pretending that he was an administration police officer by falsely presenting forged payslip for the month of August, 2009 a fact he knew to be false.

COUNT 111 – MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 357 (a) OF THE PENAL CODE.

KEITH WANYAMA YAMAMU – On the 28th day of September 2009 at Amedo Centre in Kisumu district within Nyanza Province with intent to defraud without lawful authority or excuse made a certain document namely identity card No.4091056 in the name of Samuel Kiprono Kirui purporting to be issued by Registration of Persons.

COUNT 1V – MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION

357 (a) OF THE PENAL CODE.

KEITH WANYAMA YAMAMU- O the 28th day of September, 2009 at Amedo Centre in Kisumu district within Nyanza Province with intent to defraud, without lawful authority or excuse made a certain document namely payslip in the name of Samuel Kirui Kiprono purporting to be issued by office of the President.

COUNT V – MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 357 (a) OF THE PENAL CODE.

KEITH WANYAMA YAMAMU On the 28th day of September, 2009 at Amedo Centre in Kisumu district within Nyanza Province with intent to defraud, without lawful authority or excuse made a certain document namely national identity card No.13682476 in the name of Cornella Auma Ogwei purporting to be issued by Registration of Persons.

COUNT V1 – MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 357(a) OF THE PENAL CODE.

KEITH WANYAMA YAMAMU On the 28th of September, 2009 at Amedo Centre in Kisumu District within Nyanza Province with intent to defraud without lawful authority or excuse made a certain document namely payslip in the name of Cornella Auma Ogwei purporting to be issued by Office of the President.

COUNT V11 – POSSESSION OF GOVERNMENT STORES CONTRARY TO SECTION 324(3) OF THE PENAL CODE

KEITH WANYAMA YAMAMU- On the 5th day of October 2009 at Mega plaza in Kisumu, district within Nyanza province was in possession of government stores namely administration police, certificate of appointment, rain coat, ceremonial khaki jacket with administration police buttons the property of discipline force namely the Kenya Administration police such property being reasonable suspected to have been unlawfully obtained.

2. The appellant was convicted on Count 1, 11 and V11 and fined Kshs.20,000/= and in default 3 months imprisonment. He has filed his appeal citing several grounds.

The summary of the prosecution case is as follows:

3. **PW1 JOSEPH OTIENO OLUOCH** was a supervisor at Amedo Centre. On 28th September 2009 the appellant came into her offices for purposes of purchasing goods on credit. According to the said witness he wore administration police (AP) uniform minus the barret. He produced his identity card as well as his original payslip. He then filled the forms and together with the witnesses went to the District Commissioners office to have the other 2 guarantors fill the forms too. The appellant left the witness at the waiting bay and went inside allegedly to have his sister and a colleague fill the forms. He came out and by then the forms had been filled by one Ouma and Kirui who were alleged guarantors. The witness did not see them signing.

4. Back at the offices the appellant collected a TV, home theatre, LG 353 Sonny DVD- 200 and phoenix bicycle which were delivered to him.

5. Unfortunately the following day the Amedo boss discovered that the said documents were fake and efforts to trace the appellant were fruitless. He then reported the matter at the CID office Kisumu.

6. **PW2 JAMLECK ONCHARI** works for JRS Security Company. He said that on 2/4/09 the appellant went to their offices seeking employment. He went to their office wearing AP uniform before changing to JRS uniform. They then decided to report to the police and was arrested. They also recovered other assorted government store with the appellant at Simba Nyalenda estate as enumerated in the charge sheet.

7. PW3 JOHN OTUNGA NANJALE is also an employee of JRS Security Company. He told the court that he housed the appellant for some days while he had been employed. In the process he noticed that the appellant had government stores which included 6 rain coat of AP, sweater of AP, belt, and T-shirt among others. He alerted his boss which led to his arrest.

8. PW4 P.C. DICKSON KOMBO told the court that on 5.10.09 he assisted the employees of JRS Security in apprehending the appellant. They searched a room in a lodging but were unable to recover anything. They booked him for impersonation.

9. PW5 CP CYRUS LEIKISIRMA was the investigating officer. He was tasked with the duty of carrying out the investigation. He produced all the exhibits which among others showed that the appellant had been terminated from service and the identity cards of alleged guarantors Kirui Kiprono and Cornelia Auma Ojuol were forgery.

10. When put on his defence the appellant gave sworn testimony denying the charge. He narrated that he was indeed an Administration Police Officer and that he had not been dismissed but interdicted. He blamed PW2 for having an affair with his wife Apondi Margaret. He also denied that he was found with the exhibits.

11. The appellant has mounted several grounds of appeal but substantially the same can be reduced into:

- a. **Whether the evidence as presented was sufficient to convict the appellant**
- b. **Whether crucial witnesses were left out.**
- c. **whether the appellant's constitutional rights were infringed.**

12. On the 1st issue of evidence, it is not in dispute based on the exhibits produced that the appellant was an Administration police officer. The letter dated 30.1. 2009 indicate that he was terminated. Although the same is a photocopy there is no doubt that the appellant was terminated.

13. The appellant has urged that he was not terminated but interdicted. Unfortunately there is nothing to show that. In the premises I do not find that argument valid and I shall disallow.

14. Did the appellant impersonate a police officer when he went to buy goods at Amedo Centre? I have read the evidence of PW1 and I do not find anything to the contrary. The entire transaction including the production of his identifying documents and filling in of the application forms by the appellant was done during daytime and there was nothing to show that the appellant concealed his identity. Moreover he spent sufficient time with the appellant including the delivery of the purchased items via "tuk tuk."

Clearly I do not find anything to show that he was framed by PW1.

15. Further PW3 spent time with the appellant when he housed him. This was not challenged. He did not deny that he was employed by JRS Security Company.

16. Consequently and in terms of the evidence presented the appellant had

been sacked and it was unfortunate that he did not return the government stores he was holding.

17. There was no breach of the appellant's constitutional rights as prayed in the petition. He was held in custody and produced within the specified time. In any case he ought to have raised the same during trial.

18. The upshot of my finding is that the appellant being a brilliant person as per his curriculum vitae should have used his ability for rightful cause. It appears that the appellant has engaged himself in crime which does not pay. In dismissing this appeal one hopes that the period he has served in prison has enabled him to learn. The appeal is otherwise dismissed.

Dated, signed and delivered this 8th day of March, 2016

H. K. CHEMITEI

J U D G E

In the presence of

.....for state

.....for accused