



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CRIMINAL APPEAL NO. 119 OF 2014
STEPHEN MAINA MWANGIAPPELLANT
VERSUS
REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.881 of 2012 of the Senior Principal Magistrate's Court at Murang'a by Hon. J.Wekesa – Ag. Senior Resident Magistrate)

JUDGMENT

The appellant, **STEPHEN MAINA MWANGI**, was convicted for the offence of being in possession of a paper for forgery contrary to section 359 of the Penal Code.

The particulars of the offence were that on 10th August 2012 at Kahatia market, Murarandia location of Murang'a County, without lawful authority, was found in possession of a paper intending it to resemble Kshs. 1000/= currency note.

He was sentenced to 7 years imprisonment.

He now appeals against both conviction and sentence.

The appellant was in person. He raised five grounds of appeal that can be summarized as follows:

1. That the learned trial magistrate erred in law and in fact by failing to consider that he was arrested for the of drinking during odd hours.
2. The sentence meted out was an afterthought.
3. That the learned trial magistrate erred in law and in fact by meting out a harsh sentence.

The state opposed the appeal on conviction through M/s. Joyce Gacheru, the learned counsel, who however agreed with the appellant that the sentence was harsh in the circumstances.

Briefly the facts of this case are as follows:

When some police officers met with the appellant who was staggering due to drunkenness, they stopped and searched him. They recovered a fake currency note, the subject of this case.

In his defence the appellant denied any involvement in the offence.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated Case of **OKENO VS. REPUBLIC 1972 EA 32**.

Though the record does not show that the appellant was charged for either being drunk and disorderly or for drinking at odd hours as he puts it, there is evidence to the effect that at the time of his arrest he was drunk and staggering on the road. There is no law that stops a police officer from charging a person with another offence other than the one initially arrested for.

Having considered to place the appellant on probation, the trial magistrate misdirected self on the issue of the sentence. Since the probation officer's report was favourable to the appellant, a non custodial sentence would have been the most appropriate.

There was overwhelming evidence against the appellant. The sentence that was meted out was the maximum under section 359 of the Penal Code. The state conceded that the sentence was harsh in the circumstances and rightly so. I therefore reduce the sentence to the period served. The upshot is that the appellant to be set at liberty forthwith unless if otherwise lawfully held.

DATED at MURANG'A this 19th day of July 2016

KIARIE WAWERU KIARIE

JUDGE