



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 95 OF 2012.

KEITH WANYAMA YAMANE..... APPELLANT.

VERSUS

REPUBLIC..... RESPONDENT.

(An appeal from the original conviction and sentence of S.K. Ngetich – RM. In Criminal Case No. 630 of 2010 delivered on 14th August, 2012 at Kitale.)

J U D G M E N T.

1. The appellant, **Keith Wanyama Yamane**, was convicted and sentenced to concurrent terms of three (3) years imprisonment for the offences of personation contrary to section 382 of the penal code and obtaining goods by false pretences, contrary to section 313 of the penal code. These were the first and second counts in a series of five counts. A verdict of not guilty was entered on counts three, four and five resulting in the acquittal of the appellant in respect thereof.

This appeal is therefore confined to only counts one and two for which the appellant was convicted and sentenced accordingly.

2. The particulars of the charges were that on the 22nd February, 2010, at Argos Kitale township within Trans Nzoia West District, with intent to defraud, the appellant falsely represented himself to be an administration police officer and also obtained one Sanyo LCD T.V. And one Sanyo radio cassette all valued at Ksh. 81,936/= by falsely pretending that he was an administration police officer and presenting a forged payslip for the month of January, 2010.
3. The appellant denied the charges and was tried, convicted and sentenced by the trial court presided over by the Resident Magistrate at Kitale.

Being dissatisfied with the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds in the petition of appeal filed herein on 23rd August, 2012. He appeared in person at the hearing of the appeal and presented written submissions which he fully relied on in support of his case.

The Learned Prosecution Counsel, **Mr. Kakoi**, appeared for the state/respondent and opposed the appeal.

4. In his oral submissions, the learned prosecution counsel stated that the appellant was clearly identified by PW1, 2 & 3 and that PW1 and PW2 actually participated in taking his photographs and processing the necessary documents to facilitate purchase of goods on credit such that there was no mistake in his identification. That, PW4 confirmed that the appellant impersonated him. That, the T.V. Set obtained by false pretences was recovered from the appellant.

Learned Prosecution Counsel, contended that the sum total of the evidence against the appellant showed that he committed the offences and was therefore properly convicted. That, his defence that he, the husband of PW1, bore a grudge against him was correctly dismissed by the trial court.

Learned Prosecution Counsel urged this court to dismiss the appeal.

5. In response to the foregoing, the appellant submitted that the issue herein is not that of identification but whether the charges were proved against him. He contended that the charge sheet was defective as it offended the provisions of section 134 and section 137 of the Criminal Procedure code and that the ingredients of the charges were not established by the prosecution who had the burden to prove his right.
6. Having considered the appeal in the light of the supporting grounds and the rival submissions by both sides, the duty of this court was to re-visit the evidence and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

In that regard, the court considered the evidence adduced against the appellant through the six (6) prosecution witnesses including employees of Argos Furnishers Kitale branch, **Linet Asaca (PW1)**, **Wilson Imbogo (PW2)** and **Bosco Gabriel Shilubu (PW3)**.

Administration Police Constable, **Michael Munubi Kisala (PW4)**, **Cpl. Eliud Odhiambo (PW5)** and the investigating officer, **P.C. Fastos Onyambo Gesengi (PW6)**.

The evidence adduced by the appellant was also considered by this court.

7. From the evidence and with regard to the first count of personation, the learned trial magistrate found that the appellant in order to secure a deal with the credit firm Argos Furnishers Ltd represented himself as an administration police officer by the name Michael Kisala Munubi and presented documents (i.e. payslip, a National Identity Card and a certificate of appointment.) in the name of the said person but later, it was discovered that the appellant was in actual fact not the said Michael Kisala Munubi (PW4) who confirmed that he was an administration police officer.
8. Under section 382 of the penal code, any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

Herein, there was ample and credible evidence from employees of Argos Furnishers (i.e. PW1 and PW2) showing that the appellant walked into their shop representing himself to be the administration police officer (PW4) indicated in the documents presented by himself and convinced them to sell to him on hire purchase a T.V. Set and a radio.

Readily believing that the appellant was the administration police officer he was said to be, the employees released the said items to him only to later realize that they had been duped as the real APC Michael Kisala Manubi (PW4) was traced and he confirmed that he had nothing to do with the appellant's false representations and suspected that the documents presented by him (appellant) were forged.

9. It would appear from the appellant's defence that he was previously an administration police officer but was relieved of his services in the year 2009, such that on the 22nd February, 2010, when he presented himself at Argos Furnishers shop in Kitale and feigned a serving administration police officer (PW4) he was no longer an administration police officer.

The finding by the trial court that he impersonated Michael Kisala Manubi (PW4), was correct and is hereby sustained as the ingredients of the charge in terms of section 382 of the penal code were duly established and proved against him.

10. With regard to the second count of obtaining goods by false pretences, section 312 of the penal code defines a false pretence as follows:-

“Any representation, made by words, writing or conduct of a matter of fact, either past or present,

which representation is false in fact, and which the

person making it knows to be false or does not believe

to be true, is a false pretence.”

And, under section 313 of the penal code, any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen is guilty of a misdemeanour.

11. The two aforementioned provisions of the penal code denotes an element of dishonesty on the part of the person making the false representation. The learned trial magistrate in convicting the appellant on the second count stated that the appellant represented himself as Michael Kisala Manubi and by that false representation he managed to obtain goods (i.e. a T.V set and a radio cassette) from Argos furnishers Ltd. That, it was manifest that the accused had an intention to defraud in that he would obtain the goods without paying for them or have another person not a party to the transaction pay for them.

12. This court is in agreement with the foregoing observation and finding by the learned trial magistrate as it resonates well with the evidence adduced against the appellant which evidence was credible and sufficient enough in establishing the ingredients of both section 312 and 313 of the penal code.

The appellant's conduct in his transaction with Argos furnishers Ltd vis-a-vis the purchase of the T.V. Set and the radio cassette was clearly that of a dishonest person with a clear intention to defraud. His denial of the offence was in the circumstances unsustainable. Therefore, his conviction by the learned trial magistrate on the second count is hereby sustained.

13. In his submissions, the appellant raised issues with the manner in which the charges were framed and contended that they were defective for offending section 134 and 137 of the Criminal Procedure Code.

However, this court does not think that there was any defect in the manner of framing the charges and if at all any existed then it was on form rather than substance and therefore incapable of invalidating the charges.

In sum, this appeal is lacking in merit and is hereby dismissed in its entirety.

[Delivered & signed this 12th day of March, 2015.]

J.R. KARANJA.

JUDGE.