



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CRIMINAL APPLICATION NO. 117 OF 2014

JEREMIAH MWITA CHACHA alias

DARUS MUGEMA SALAWA.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

(From the original conviction and sentence in Criminal Case No. 723 of 2014

in the Senior Principal Magistrate's court at Nyando)

J U D G M E N T

1). The appellant herein was charged with the offence of possessing papers of forgery contrary to section 367 of the Penal Code.

The particulars were that on the 11th day of June 2014 at Katito trading centre in Nyakach District within Kisumu County, without lawful authority was found in possession of eight papers intended to resemble Kenya Shillings 1000/= denomination.

1. Serial No. AN9130099, Two notes;

2. Serial No. 9130093, Two notes;

3. Serial No. 9130053, Three notes;

4. Serial No. AN9130030, One note;

Total 8000/=.

2). The appellant on his own plea of guilt was convicted and sentenced to three years imprisonment and afterwards to be repatriated to Tanzania.

3). The appellant herein has chosen to file an appeal filed on 14-11-2014 brought under the provisions of Article 22 (1) 23 (3) and 168 of the constitution. In it he prays that the 3 year sentence be altered so as to be given an option of fine and further that he be admitted to a non custodial sentence. He depones that he has young children who depend on him and are school going. He further argues that he is a first offender and therefore merits the above options.

4). The state has orally opposed the application arguing that the sentence meted out against the appellant was lenient since the maximum sentence as provided under section 367 of the Penal Code for such a felony is 7 years. They further argued that the appellant pleaded guilty to the offence and he is therefore precluded from seeking such prayers.

5). Having carefully perused the proceedings from the lower court as well as the appellant's application, it is crystal clear that the appellant pleaded guilty to the charge. My understanding is that the said plea was made consciously without any intimidation and coercion. Even as he prayed in court his main concern was that he did not know that the notes were fake.

6). But from the facts as adduced by the prosecution it appears that the applicant attempted to run away before he was arrested. I do not think therefore that the appellant was innocent as he pleads.

7). Article 22 (1) of the constitution which the appellant has premised his appeal deals with the Enforcement of Bill of Rights where as Article 23 (3) deals with the authority of the courts to enforce the bill of right. Respectfully there is no evidence from the pleadings as well as the submissions by the appellant that any of his rights have been violated. He was subjected to a normal due process of criminal law and he cannot be heard to argue otherwise.

Equally, there is no provision under section 367 of the Criminal Procedure Code Cap 75 Laws of Kenya that provides for an option of fine or non custodial sentence. Sentencing is always discretionary. This court shall interfere only to such sentence if the same is manifestly excessive or too low or there is such a breach of fundamental principles of law by the trial court. For now I do not see any sufficient reason to interfere. In any case, and as argued by the learned state counsel, the three year sentence imposed against the appellant, was less than the maximum seven years as anticipated under the Act. I do find the same reasonable.

In the premise the application is hereby dismissed.

Dated, signed and delivered at Kisumu this 4th day of May, 2015.

H.K. CHEMITEI

JUDGE