



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL APPEAL NO. 226 OF 2010**

**PETER MARIO MURIITHI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with the offence of being in possession of forged currency contrary to section 359 of the Penal Code. It was alleged that on the 25<sup>th</sup> day of August, 2010 at Kagere Shopping Centre in Nyeri South District within Central Province the appellant was found in possession of eight forged notes of 1000 and six forged notes of 200 denominations serial numbers BF 8635076, AG 8635077, BK 8635098, BC 9105969, BC 9105961 and BC 915966 without authority.

The appellant pleaded guilty to the charge and was accordingly convicted on his own plea of guilty and sentenced to seven years imprisonment.

Despite entering a plea of guilty, the appellant has appealed against both conviction and sentence.

When the appeal came up for hearing, all that the appellant told the court was that he wants it to consider the sentence meted out against him as “he had been in jail for a long time”.

Counsel for the state opposed the appeal and urged that under **section 348** of the **Penal Code**, the appellant could only appeal against the legality of the sentence since he had pleaded guilty to the charge against him. Counsel urged that the court imposed a maximum sentence provided under **section 359** of the **Penal Code** and gave reasons for its decision; the legality of the sentence was not therefore in question.

**Section 359** of the **Penal Code** under which the appellant was charged provides as follows:-

**359. Purchasing forged notes**

*Any person who, without lawful authority or excuse, the proof of which lies on him, imports or purchases, or receives from any person, or has in his possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of a felony and is liable to imprisonment for seven years.*

It is clear that seven years imprisonment imposed by the subordinate court is the maximum sentence provided for the kind of offence with which the appellant was charged and convicted of. In imposing this sentence the learned magistrate took into account the appellant's mitigation and noted that the appellant was remorseful; however, the court also noted that the offence committed was serious as the circulation of fake currency has the potential of adversely affecting the economy of the country. The court went further to note that deterrent measures ought to be taken to discourage such offences and one of these measures was, in its view, to impose the maximum prison term.

**Section 348** of the **Criminal Procedure Code** prohibits appeals from convictions arising out pleas of guilty; under the same provision, this court can, however, interrogate the extent and the legality of the sentences imposed upon convictions on such pleas. It provides:-

**348. No appeal on plea of guilty, nor in petty cases**

*No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.*

The state informed the court that the appellant had no previous criminal records and so it was not in doubt that the appellant was a first offender. As the learned magistrate correctly noted, the appellant was remorseful and the record shows that he pleaded for leniency. I would suppose that in these circumstances, a maximum sentence, though legal was severe. I am persuaded to interfere with the extent of the sentence and reduce it to five years imprisonment. I will accordingly allow the appellant's appeal on sentence only to the extent of substituting a sentence of seven years with that of five years imprisonment from the date of the sentence. It is so ordered.

**Dated, signed and delivered in open court this 8<sup>th</sup> day of May, 2015**

**Ngaah Jairus**

**JUDGE**