

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO 273 OF 1995

GEORGE MAURICE OGUTU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 744 of 1994 of the Principal Magistrate's Court at Mombasa – G Aburili, Esq, PM)

JUDGMENT

The appellant, George Maurice Ogutu was convicted after trial by the learned principal magistrate, Mombasa of the offence of forgery contrary to section 349 of the Penal Code. Upon his conviction, he was sentenced to serve 2 years imprisonment. His appeal to this court is against both conviction and sentence.

The facts giving rise to the charge that was laid against the appellant has been well set out in the judgment of the learned trial magistrate.

There is no dispute on the facts that the appellant was duly interviewed and secured a job as a finance officer at Mombasa Polytechnic during the month of May 1991 on the strength of a photocopy of a certificate S/No NAC 5202 allegedly issued by the Kenya Accountants Secretaries National Examination Board purporting to show that he, George Maurice Ogutu, sat for and passed the Certified Public Accountants Part II Examination held in December, 1992. At the time he was interviewed, he did not produce the original certificate which was required. He was however successful in the interview and on taking up the appointment, he was required to produce his original certificate but he failed to do so despite several reminders.

The Principal of the Polytechnic, Arnest Odenyi Kisane (PW2) then took up the matter of verification of the photocopy of the certificate S/No NAC 5202 which the appellant had produced during the interview with the Examination Board. It was then found according to the testimony of Erustus Kirenga Gitau (PW1) who was the Secretary and Chief Executive of the Board that the exhibit photocopy certificate (Ex 1) purportedly issued by the Board in the name of the appellant was a forgery. According to the records held at the Board, the serial No of the alleged certificate No NAC 5202 belonged to one Hudson Mutua Gisairo (PW4) who sat for and passed CPA Part I in June 1980 and never went beyond CPA I. This was confirmed by the said Hudson Mutua Gisairo (PW4). It was further found that the said photocopy certificate in the name of the appellant was a forgery as the signature appearing thereon was not that of PW1 who was then the sole signatory of the certificates issued by the Board. Further, it was found that the appellant never took any examines of the Board in the exams held in December 1982 as appearing in the certificate. The appellant was subsequently arrested and charged.

In his defence, the appellant maintained that the questioned photocopy of the certificate S/No NAC/5202 was not a forgery. He maintained that he sat for the Certified Public Accountants Part II exams in April 1979 under S/No NAC 1502 which he passed and was issued with the certificate but the original certificate got lost. He denied having forged the photocopy certificate S/No NAC/5202 (Ex 1) which he used to secure employment at the Kenya Polytechnic.

The issue that was before the court for determination was whether the questioned photocopy of the certificate S/No NAC/5202 bearing the name of the appellant purportedly issued by the Kenya Accountants & Secretaries National Examination Board was a forgery.

The learned trial magistrate in a carefully written judgment considered the above issue and was satisfied that the said certificate was a forgery. I agree with him. The evidence relied upon by the prosecution to prove that this photocopy certificate was a forgery was overwhelming. Nowhere does the name of the appellant appear with the Examinations Board as the holder of Certificate No S/No NAC/5202. In any case, the holder of that certificate appeared before the court and stated that he never went beyond CPA I. Moreover, the appellant says that he took his examination in April 1979 and yet the photocopy of the certificate he was holding was showing that the exams were taken in December 1982. If I may be permitted to say, the evidence of the appellant was a white lie and was rightly disbelieved by the learned trial magistrate who fortunately had a lot of regard for him and considered him as a brilliant man. He overdid his brilliance by forging the certificate the subject matter of the case.

I am satisfied that the conviction of the appellant was quite safe. I find no merit in his appeal against conviction which I hereby dismiss.

As for the sentence of 2 years imprisonment that was imposed, the appellant stated that it was manifestly harsh and excessive but it was the contention of the learned senior principal state counsel that the sentence was appropriate given the prevalence of offence committed.

It is not in dispute that the appellant committed the offence in order to secure employment. I take into consideration the state of unemployment situation in this country that could easily drive someone who has a family into committing an offence which he could not have otherwise committed. The conditions of living are now quite harsh and this has affected even the prisons where the welfare of the prisoners leaves a lot to be desired.

In the result, the appeal against conviction is dismissed while the appeal against sentence is allowed as hereinabove stated.

Dated and delivered at Mombasa this 31st day of July, 1995

S.O Oguk

JUDGE