



IN THE COURT OF APPEAL

AT MOMBASA

(Coram: Gachuhi, Masime & Gicheru JJ A)

CRIMINAL APPEAL NO 41 OF 1992

BETWEEN

SAYYID AHMED MOHAMED.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Mombasa (Justice Shields) dated 31st January 1992

in

HCCRA No 28 of 1991)

JUDGMENT

The appellant was jointly charged and convicted with another before the Resident Magistrate's Court at Kwale with the offence of giving false information to a person employed in the public service contrary to section 129 (a) of the Penal Code. He was convicted and sentenced to 8 months imprisonment. On appeal to the Superior Court his appeal against conviction was dismissed but the sentence was reduced to a fine of Kshs 1,100/= and in default one month imprisonment. That precipitated this appeal on three grounds which are summarised as under:-

1. That the learned Judge having expressed doubt about the case failed to allow the appeal,
2. That the learned Judge failed to consider the evidence by the prosecution separately as against each appellant,
3. That the learned Judge erred in law in failing to find that the appellant did not give false information to Amons Mathias Mgenyi (PW 6).

Mr Gakuhi for the appellant complained in ground 3 that the evidence that was adduced by the complainant (PW 6) did not prove the offence with which the appellant was charged. The particulars of the offence were:

1. Sayyid Ahmed Mohamed 2. Mohamed Abushiri Mohamed On the 1st day of February, 1985,

at District Land Registrar's office, Kwale, within Kwale District of the Coast Province, jointly informed Amons Mathias Mgenyi, the District Land Registrar a person employed in the public service that, land parcel No Kwale/Wasini Island/396 belonged to Sayyid Ahmed Mohamed instead of Saidi Badi the registered owner of the said parcel of land which information you knew to be false, thereby causing Amons Mathias Mgenyi to alter the land from Saidi Badi to Sayyid Ahmed Mohamed an action he would not have done if the truth was known to him."

In his evidence, Amons Mathias Mgenyi (PW 6) said that on 1st February, 1985, Sayyid Ahmed Mohamed went to his office and told him that he owns Kwale/Wasini/396 and that he wanted a title deed. On checking the register, the name appearing therein was different. The Registrar advised him on the procedure of changing that name. Accordingly he gave him forms for that purpose. The forms duly completed and certified by the Assistant Chief and the Chief were placed before the Musabweni Divisional Land Control Board and were approved. When on the 2nd May, 1985, when Sayyid Mohamed went to the office of the Registrar to have the name changed, he was asked for a witness who knew him, Sayyid Mohamed mentioned the name of the appellant as a credible witness. When the appellant went to the Registrar's office, he said that he stays at Wasini island. There was nothing else attributed to him. PW 6 never stated that the appellant went to his office on 1st February, 1985, as stated in the particulars of the offence. The evidence given in Court did not establish the charge preferred against the appellant.

It is complained by the appellant that had the learned Judge considered separately the prosecution evidence adduced in respect of the appellant and his co-accused in the trial Court, he would have reached a different conclusion and thereby allow the appellant's appeal. The failure by the learned Judge to do this led to the complaint in ground one regarding which the learned Judge stated:

"I have had considerable doubts about the case".

Though he expressed doubts, he did not set them out. In the absence of any explanation, the learned Judge erred because it is trite law that the appellant should have benefited from those doubts and allow the appellant's appeal. Counsel for the Republic who appeared before us did not address us on the issues other than submitting that she supported the conviction.

From the foregoing, we are unable to uphold the appellant's conviction. We allow the appeal, quash the conviction and set aside the sentence substituted by the Superior Court and direct that the fine paid by the appellant be refunded to him.

That is the order of the Court.

Dated and delivered at Mombasa this 30th day of July , 1992

J.M GACHUHI

.....

JUDGE OF APPEAL

J.O MASIME

.....

JUDGE OF APPEAL

J.E GICHERU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR