



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL APPEAL NO 765 OF 1987**  
**BETWEEN**  
**KAMAU.....APPELLANT**  
**VERSUS**  
**REPUBLIC..... RESPONDENT**  
**JUDGMENT**

*(Appeal from a Conviction and Sentence of the Resident Magistrate's Court at Nairobi, B Obayo Esq)*

January 8, 1988 **Bhandari & Porter JJ** delivered the following Judgment.

The appellant was charged in the lower court on four counts, viz theft by a public servant (count 1), forgery (count 2), uttering a false document, contrary to Section 353 (count 3) and attempting to obtain goods by false pretences, contrary to section 313 as read with Section 339 of the Penal Code (count 4). He was acquitted on the first two counts but convicted on counts 3 and 4 and sentenced to pay a fine of shs 1,000/= on each of the two counts or serve three months' imprisonment on each count in default. He now appeals from the said conviction and sentence.

The prosecution evidence was that three LPO books were lost in August, 1984 from some Government Ministry after it had been supplied by the Government Printer. A notice to that effect had appeared in the Kenya Gazette being No 15 of 12th April, 1985. As the particulars of the charge in count 1 had alleged that the appellant stole the LPO (Ex 1) from the Government Printer the learned trial magistrate acquitted the appellant on this count because the evidence showed that it was stolen from a Government Ministry and hence did not support the particulars in the charge sheet. The LPO was however from one of the three stolen LPO books.

With regard to other charges the evidence was that on 13th May 1986 the appellant had gone to the offices of Equip Agencies in Lusaka Road, and presented a form headed Request for Quotation (EX 3) to Benjamin Omolo (P.W. 2) the Sales Manager. The appellant gave his name as Peter Kimani and asked him to fill in the quotations for the items listed on the form. The quotation form bore the stamp of the Ministry of Health. Omolo completed the form by quoting prices and value of goods listed there and then value amounted to shs 92,000/-. He handed the quotation to the appellant retaining a copy thereof. About a week later, on 21st May the appellant went back to Omolo, this time carrying the LPO (Ex 1) for those goods which he had obtained a quotation. Omolo told the appellant to return later for the goods, and the appellant left. Omolo had explained to the trial court that he sent the appellant away because for orders in excess of shs 50,000 from a Government Ministry a supplier has to have permission from a senior officer

of that Ministry before supplying the goods. Omolo rang the Accountant of the Ministry of Health and the Senior Supplies Officer of the Medical Stores. As a result of the information he received he made a report to the police.

The appellant next went to Omolo on 27th of that month. Omolo was not in, but he soon arrived. He found a pick up GK 036C parked at the gate. That vehicle drove away as soon as Omolo arrived there. Omolo met he appellant inside the office. After a short talk with appellant Omolo went to the Director's office and the appellant started to leave. He had to be chased by the cleaners and guards and he was captured on the other side of the road outside the office. The police from the Industrial Area Police Station was called and they re-arrested the appellant. The appellant then revealed his true identity and the fact that he was employed as a subordinate staff at the Ministry of Agriculture, Afya House.

The prosecution had called three officers from the Ministry of Health to prove that neither the quotation form (Ex 3) nor the LPO (Ex 1) had emanated from that Ministry. Wanyonyi (PW 3) Executive Officer of the Ministry of Health who maintains Quotation Register produced that register (Ex 4) and stated that the Quotation (Ex 3) could not have come from the Ministry of Health because during that year only 70 requests for quotation had gone out and all the requests were serially numbered. The quotation (Ex 3) bore No 124. Furthermore, it was not signed by him.

Paul Aila (PW 4) the Chief Administrative Officer at the Central Medical Stores had told the court that their offices were the only supply office for the Ministry of Health and that the signatures on the LPO (Ex 1) were unknown to him. Lastly Mulwa (PW 5) who is he Supplies Assistant in the Central Medial stores had said that he was in charge of vouchers and LPO's . The quotation and a LPO had not come from his department nor were the signatures thereon known to him. Even the rubber stamp on those documents was not genuine because the P.O. Box Number of the supplies Branch is 40425 whereas the stamp shows P.O. Box 30016 which in fact is the number of the Ministry's Headquarters.

The appellant in his defence had denied that he ever went to the offices of Equip Agencies or saw Omolo or anybody else there. According to him he was on leave that month and had gone to his home in Nyeri. He returned on 27th May and as proof of that he had produced a bus ticket of that date. When he arrived in Nairobi on that date he went and delivered a letter to his brother. On his way back he saw a man being chased. That man managed to escape in a pick-up. The pursuing crowd caught him instead.

As already stated the appellant was convicted on the second count of forgery. Mr Gatimu, the learned counsel for the appellant presented to us what may be described, a novel argument. He submitted that if a person is acquitted if forgery he cannot be found guilty of uttering a false document. There is no substance in this submission. The short answer to this submission is that a person who with intent to defraud utters a forged document need not have forged the document himself. He could have received it already forged by somebody else. What the court has to be satisfied is that the person uttering it knew that it was forged and that he uttered it with intent to defraud.

In this case the appellant who is a subordinate staff in the Ministry of Agriculture had no business to be obtaining quotations for the Ministry of Health and thereafter going to the suppliers armed with that Ministry's LPO so as to obtain goods worth about 100,000. That the LPO as well as the quotation were forgeries is amply proved by the three officers from the Ministry of Health. The appellant denied that he was the one who had gone to Omolo. According to Omolo the appellant went to him thrice so that there could have been no question of mistaken identity. Omolo is positive that it was the appellant who had gone to him on all those occasions. The fact that the appellant might have traveled from Nyeri on the day of his arrest is neither here nor there. That bus ticket is no evidence that the appellant was at Nyeri for two or more weeks preceding that date. We on our own assessment of the evidence are satisfied that the appellant uttered that LPO with intent to defraud and in an attempt to steal goods worth shs 92,000/-. He was therefore rightly convicted on the two counts of uttering and attempted theft as charged in counts 3 and 4 respectively.

Mr Gatimu did not address us on sentece which in any case is on the lighter side. The appeal is therefore dismissed both against conviction and sentence.

**Dated and delivered at nairobi this 8th day of January , 1988.**

**BHANDARI**

**PORTER**

**JUDGE**

**JUDGE**