



**Kimaruti v Republic (Criminal Appeal E016 of 2024)  
[2025] KEHC 13669 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E016 OF 2024  
S MBUNGI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**VINCENT BRUNO KIMARUTI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal arising from the decision of Hon. Joseph Riitho Ndururi  
(P.M) in Kakamega C.M. criminal Case No. E499 of 2022 delivered on  
30th January 2024 and the sentence pronounce on 13th February 2024)*

**JUDGMENT**

1. The appellant, Vincent Bruno Kimaruti, had been charged with the offence of being in possession of fake foreign currency contrary to section 367 of the Penal Code. The trial court, upon hearing the prosecution's witness and the defence case, found that the prosecution had proved its case beyond a reasonable doubt.
2. The trial magistrate found the accused guilty and convicted and sentenced him to 4 years' imprisonment on 13<sup>th</sup> February 2024.
3. Being aggrieved and dissatisfied with the decision of the trial court made on 30<sup>th</sup> January 2023, the appellant filed an appeal against both the conviction and sentence on the following grounds;
  - a. The trial court erred in fact by failing to appreciate that the investigations and the search were conducted absence of the accused person, notwithstanding the fact that the 1<sup>st</sup> accused was in the police station, and as a result of this, the prosecution failed to place the 1<sup>st</sup> accused person to the scene of the crime.
  - b. The trial court erred in fact and law by convicting the 1<sup>st</sup> accused person, notwithstanding the fact that the 1<sup>st</sup> accused person did not sign the inventory form of the items recovered.



- c. The trial court erred in fact and law by failing to take notice that there was no fingerprint or dust verification on the 4,252 pieces of counterfeit USD dollars and/or on the bag containing the said items for purposes of linking the 1<sup>st</sup> accused person to the items recovered.
- d. The trial court erred in fact and law I finding the accused person guilty despite the fact that no photograph was taken in respect of the house where the bag containing the 4,252 pieces of counterfeit USD dollars was recovered.
- e. The trial court erred in fact and law by convicting the 1<sup>st</sup> accused despite the court having analyzed and established that the prosecution did not prove the ownership of the house from which the items were recovered.
- f. The trial court erred in law by relying on the evidence of the 2<sup>nd</sup> accused person in proving the ownership of the house where the items were recovered, and in the circumstances, shifted the burden of proof from the prosecution to the 1<sup>st</sup> accused person.
- g. The court erred in law by relying on the evidence of the 2<sup>nd</sup> accused in filling the gaps of the prosecution's case, thus using the 2<sup>nd</sup> accused person's testimony as part of the prosecution's witnesses' testimony, hence jeopardizing the 1<sup>st</sup> accused person's case.
- h. The trial court erred in law by convicting the accused person to serve a custodial sentence notwithstanding the fact that the pre-sentence report was favourable to a non-custodial sentence, and hence the sentence was harsh in the circumstances.
- i. The trial court erred in law and fact by failing to take into account that none of the prosecution witnesses heard the conversation between the 1<sup>st</sup> and 2<sup>nd</sup> accused person at the police station and thus the conclusion by the trial court that the 1<sup>st</sup> accused person set the 2<sup>nd</sup> accused person to his house to conceal the bag containing the 4,252 pieces of counterfeit USD dollars is unsubstantiated and no proof was tendered by the prosecution.
- j. The trial court erred in fact by failing to take into account the bias of the 2<sup>nd</sup> accused person in her testimony, taking into account that the relationship between the 1<sup>st</sup> and the 2<sup>nd</sup> accused person was boyfriend and girlfriend had broken down irretrievably.

## **Submissions**

### **Evidence in brief**

4. PW1, PC Francis Agesa testified that on 12th April 2022, he and Cpl. Anna Akoth arrested the 1st accused, Vincent Bruno, following a complaint by one Harriet Machisi regarding obtaining money by false pretense. While the 1st accused was in custody, officers allegedly overheard him instructing his wife (the 2nd accused) to hide a bag. Upon interrogation, the 2nd accused confirmed this and led the officers to Joyland near Musaa Primary School, where she retrieved a black laptop bag from a minor.
5. He claimed that inside the bag was a sealed brown carton box containing 4,246 pieces of 100 USD notes marked "UNAID," which the police officers suspected to be counterfeit. These notes, along with the bag and carton box, were seized and presented in court as exhibits (PMFI-1, PMFI-2, and PMFI-3).
6. During cross-examination, PW1 admitted that no documents had been provided to prove the 2nd accused was the 1st accused's wife, nor was the minor who handed over the bag identified. He confirmed the 1st accused was not present during the recovery and was separated from the operation to avoid interference. He was not the investigating officer.



7. PW2, CPC Samson Omala, a qualified forensic document examiner, presented a report authored by his colleague, PC Audrey Achieng, regarding bundles of suspected counterfeit 100 USD notes (marked A1 to A3) delivered to the DCI lab on 19th May 2022 by PC Erastus Kioko.
8. PW2 testified that upon examination, the notes were found to:
  - a. Be of poor-quality paper and texture inconsistent with genuine currency,
  - b. Have repeated serial numbers,
  - c. Lack color-shifting security features, and
  - d. Glow under ultraviolet light rather than reveal embedded security features.
9. Spectroscopic analysis further confirmed that the notes were counterfeit. PW2 authenticated the report, stating he had worked with the author for over five years and was familiar with her signature and handwriting.
10. On cross-examination, PW2 admitted he did not produce his academic credentials in court, had no genuine USD notes for comparison, and had not specified the serial numbers in court. However, he clarified that the exhibit memo contained them, and each bundle had papers with identical serial numbers.
11. PW3 No. 257115 James Juma testified that on 11th April 2022, he was instructed by the OCS IP Mwita to escort an inmate, the 2nd accused, to Joyland. At Joyland, the 2nd accused collected a black bag from a minor.
12. She then led the officers to her house, where she opened the bag in their presence, revealing a sealed carton box containing bundles of what appeared to be USD notes. The 2nd accused was escorted back to Kakamega Police Station.
13. In cross-examination, PW3 confirmed he did not know the 1st accused, was not present during the 2nd accused's interrogation, and could not account for the current location of the black bag. He also stated that nothing else was recovered from the house.

### **Investigating Officer's Evidence**

14. The investigating officer took over the matter after both accused persons had been arrested. He received an inventory and an exhibit memo regarding the recovery of a black bag containing 4,252 suspected fake 100 USD notes and a black card. The exhibit memo dated 19th April 2022 (PEXh 6) and the inventory (PEXh 7) were signed by both the 1st and 2nd accused.
15. He confirmed that the 1st accused rented the house from which the bag was recovered, which was shared with the 2nd accused. However, he could not verify who paid the rent or identify the exact location of the bag's recovery within the house. No additional items were recovered during the search.

### **Defence Case Summary**

16. DW1 – 1st Accused (Vincent Bruno), an electrician, testified that on 12th April 2022, he was arrested near Mwalimu Sacco after encountering one James, to whom he owed Kshs. 10,000/= . He denied involvement in counterfeit currency and claimed he had handed over Kshs. 10,000/= to the 2nd accused for safekeeping. He also denied knowledge of the bag or its contents and denied signing the inventory form (PEXh 7).



17. He further alleged that he had reported police misconduct to IPOA. He stated that the Kshs. 10,000/= was meant for his Chama (savings group), not for repayment of the alleged debt. On cross-examination, he admitted knowing one Sharon, who had a stolen car incident, but denied calling the 2nd accused after his arrest. He also admitted that the money was already allocated and was not intended to repay James.
18. DW2 – 2nd Accused (Laura Musilwa Shiunza), a pharmaceutical employee, stated that on the material day, she visited the 1st accused at the police station, and he instructed her to go to his house and hide a bag. She collected the bag and left it with a minor at a kiosk.
19. She was later questioned by police and led them to the kiosk, then to the 1st accused's house, where the bag was retrieved. Inside was a sealed carton containing bundles of suspected counterfeit USD notes. She denied knowing the bag's contents and claimed she acted solely on the instructions of the 1st accused.
20. During cross-examination, she confirmed being in a romantic relationship with the 1st accused and stated that she was familiar with his house. She also confirmed that she received Kshs. 10,000/= from him, and that the recovery occurred while the 1st accused was in custody.
21. The trial court, upon hearing both parties' cases, found that the prosecution had proved its case beyond a reasonable doubt. In his judgment dated 30<sup>th</sup> January 2024, Hon. Ndururi (P.M) found that the prosecution had proved its case against the 1<sup>st</sup> accused person and sentenced him to 4 years' imprisonment, while the 2<sup>nd</sup> accused was acquitted of the charges, hence the appeal above.

### **Issues for Determination**

22. The court has considered the grounds of appeal, the proceedings of the lower court, and the submissions. I isolate 2 issues for determination.
  - a. Whether or not the Prosecution proved its case beyond a reasonable doubt?
  - b. Whether the trial court erred in sentencing the appellant to imprisonment, given the pre-sentence report.

### **Whether the prosecution has proved its case beyond reasonable doubt.**

23. The onus is always on the prosecution to prove its case beyond reasonable doubt and it must prove each element of an offence. See *Wambua Mwangi v Republic* [2014] eKLR.
24. The accused is charged with offence of being in possession of fake foreign currency, 4,246 pieces of 100 USD notes marked 'UNAID' contrary to section 367 of the penal code.
25. I have seen expert report showing that upon examination the currency was found to be fake.
26. To succeed in this case, the prosecution was supposed to prove either the accused had actual possession or constructive possession of the fake currency.
27. Possession is defined under penal code as:-

“be in possession of” or “have in possession” includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or



have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

28. From the evidence on record the prosecution did not prove that the alleged fake currency notes were found in the possession of the appellant because of the following gaps in the prosecution evidence.
  - a. The officers who allegedly heard the appellant instructing the 2<sup>nd</sup> accused to go to his house and take a certain bag and hide it were not called as witnesses.
  - b. The alleged fake currency were allegedly recovered in the absence of the appellant.
  - c. The inventory showing the items recovered was brought to the accused to sign while in the police cells.
  - d. There was no evidence to show that the house where the fake currency were allegedly recovered was leased by the appellant and that the appellant used to stay in that house, the landlord was not called as a witness neither lease agreement produced.
29. It seems the trial court wholly believed the evidence of the 2<sup>nd</sup> accused without cautioning itself on the dangers inherent on relying on the evidence of a co-accused or accomplice for there is always possibility that co-accused or accomplice can falsely testify against the other in order to save his/her skin. There is always a need for such evidence to be corroborated by other independent evidence which was not the case in this case. See *Nyamongo v Republic (Criminal Appeal 37 of 2019) [2025]* and *Kirimi v Republic (Criminal Appeal 105 of 2016) [2025]* KECA ...
30. Further failure to call critical witnesses also weakened the prosecutions case for adverse inference can be made that the evidence was to be inconsistent with the prosecutions case. See *Awii v Republic (Criminal Appeal E008 of 2025) [2025]* KEHC 5626 (KLR) and *Wainaina v Republic (Criminal Appeal 96 of 2019) [2025]* KECA 1184 (KLR)
31. The above reasons makes me find that the trial court was wrong to convict the appellant given the gaps I have pointed out in the prosecutions case.
32. I therefore quash the conviction and replace it with an order for acquittal under Section 215 of the Criminal Procedure Code for lack of sufficient evidence. The Appellant is set free unless lawfully held.
33. On the issue of sentence which was allegedly meted without adopting the recommendation contained in the pre-sentence report it is neither here or there for a pre-sentencing report is not binding to the court but it acts as a guide. The sentence was legal but in view of quashing of the conviction the sentence is also set aside.
34. So in a nutshell the appeal succeeds in its entirety.
35. Right of Appeal 14 days.

**DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30<sup>TH</sup> OF SEPTEMBER, 2025.**

**S.N. MBUNGI**

**JUDGE**

In The Presence of;

CA: Angong'a

Ms Namange for the Appellant, present.



Ms Osoro for the ODPP, present.

