



**Ngui v Republic (Criminal Appeal E034 of 2022)
[2025] KEHC 14394 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14394 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL APPEAL E034 OF 2022
NIO ADAGI, J
OCTOBER 8, 2025**

BETWEEN

ANTONY MUTUNE NGUI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. K Kenei (RM)
delivered on 12th July 2022 in Criminal Case no. 81 of 2019)*

JUDGMENT

Introduction

1. The Appellant was charged with the offence of personation contrary to Section 382 of the Penal Code. The particulars are that on the 5th of February 2019 at Hidayah hotel, Mjini Estate in Machakos Sub-County within Machakos County with intent to defraud falsely represented himself to Mohamed Hassan as a Public Health Officer.
2. The Appellant was arraigned in court on 8/2/2019 where he pleaded not guilty and the matter was set down for hearing. The Prosecution called 4 witnesses to prove its case and the Appellant was placed on his defence. The Appellant gave sworn evidence and called I witness. Upon considering the evidence adduced, the trial court found the Appellant guilty. He was convicted and sentenced to 6 months probation on 25/07/2022.
3. The Appellant has since served the sentence.
4. Being dissatisfied with the decision of the trial court, the Appellant has lodged the instant appeal vide a Petition of Appeal dated 4th August 2022. The Appellant appeals against the conviction and sentence on the following grounds: -



- i. the learned Trial Magistrate erred in law and facts when she convicted the Appellant based on insufficient evidence.
 - ii. the learned Trial Magistrate erred in law and facts when she disregarded the defence of the Appellant which was not challenged during cross-examination.
 - iii. the learned Trial Magistrate erred in law and facts when she held that there was no prior grudge between the accused and complainant, disregarding the evidence that the complainant was obstructing the Appellant from carrying out his duties.
 - iv. the learned Trial Magistrate erred in law and facts when she failed to give the Appellant the benefit of doubt in the face of several material contradictions in the prosecution's case.
5. The appeal is opposed by the State who argue that the trial court properly evaluated the evidence and came to the right conclusion, thus the appeal must fail.
6. The appeal was canvassed through written submissions. Both parties filed their respective submissions.

Analysis and Determination

7. In determining this appeal, this court is fully aware of its duty as the first appellate court as espoused in the case of *Okeno Vs R* (1972) EA 32 where the court stated:-
- “An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion”.
8. Having carefully re-evaluated and re-analysed the evidence on the trial court's record, the grounds of appeal and the Parties' rival submissions on the appeal, the issue for determination for this court is whether the Appellant has made a case for this court to interfere with the conviction and sentence imposed by the trial court.
9. Section 382 of the Penal Code provides that:
- “Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.”
10. To prove the case of personation the following ingredients need to be proved:
- a. a person with the intent to defraud any person
 - b. falsely representing himself to some other person living or dead
11. The complainant Mohamed Hassan (PW1) testified that he is a hotel owner of Hidayah Hotel in Machakos. On 5th February 2019, the Appellant approached him and said he is a Public Health Officer and that he had come to inspect the hotel and he needed permission. PW1 showed him the kitchen and the Appellant then asked for Kshs.5000 which PW1 refused to give him. PW1 testified that Appellant failed to show any identification card showing he is a Public Health Officer.
12. Dr. Nassir Noordin Jamal (PW2), a Director Medical Services, Machakos testified that he saw the Appellant come into the hotel. PW2 heard PW1 request for the Appellant's identification card. PW2 also heard the Appellant ask PW1 to give him Kshs.5,000/=. He also heard the Appellant say he was the Chief Public Health Officer. PW2 testified that he picked interest as he knew the Chief Public Health



- Officer. PW2 was the Director Medical Services. He worked and sat in various committees with the Chief Public Health Officer by virtue of their jobs and the Appellant was not the Chief Public Health Officer he knew. PW2 confirmed that the Applicant never produced any work badge or card.
13. Ashraf Sefu Kilonzo (PW3), a Supply Officer at District County Commissioner's Office Machakos testified that he had passed by Hidayah Hotel where he takes tea and he found a commotion at the hotel. He made his way and found PW1 asking the Appellant to identify himself as the Appellant was saying he was a Public Health Officer but he had no job ID card. Members of the public frisked him and found water bills in an envelope (PEExt.1) and a job card (PEExt.2). He told PW1 to accompany the Appellant to the police station.
 14. No. 41833 Cpl Mwinzi Mbula (PW4), attached to Machakos police station crime and investigations testified that he took over the file from Paul Nduva who had retired on 01/07/2021 and witnesses had recorded statements. The job card PEExt.2 recovered from the Appellant had his names. The job card did not show the Appellant worked for Public Health.
 15. In his defence, the Appellant (DW1) stated that he worked for Machakos Water and Sewerage Co-operations and Maintenance Department. On the material date of the offence, he was in the course of duty working for Machakos Water and denied committing the offence.
 16. Simon Kimanzi Nzuva (DW2) testified that he worked with Machakos Water in charge of Human Resource and Administration. He confirmed that the Appellant was one of their employees and on the said date the Appellant was out on duties. DW2 stated that he had sent the Appellant and 2 others to Mjini to check on those not paid up and those not connected to the sewerage system. He was later informed the Appellant had been arrested by Pius Kioko who accompanied him.
 17. This court observes that the Appellant in his defence, denied the charges and testified that on the material date of the offence, he was working for Machakos Water and denied committing the offence. With respect, I find this defence to be unbelievable. I do not see or discern a possibility of someone being arrested inside a hotel in such a manner as was for the Appellant when he was in the course of duty with his colleagues. He must have been arrested after he presented himself as the Public Health Officer with the intention to defraud of PW1 as stated by all the 3 witnesses who were present at the hotel.
 18. The defence of the Appellant also was a mere denial when he stated that he went to the building to check if the sewer was paid yet he was not able to identify himself or show the complainant any statements or bills for that particular building. He did not call the two boys and or his two colleagues in his company who went out to alert members of the public to support his defence case.
 19. I sincerely do not find any merit in the defence of the Appellant as presented before the trial court and I dismiss the same. I am in the circumstances convinced that the prosecution discharged its burden and proved the charge as against the Appellant beyond any reasonable doubt as required by the law and as guided by the authority of *Woolmington v DPP (1935)AC 462*.
 20. I accordingly dismiss the appeal of the Appellant.
 21. It is so ordered.

JUDGMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 8TH OCTOBER 2025

NOEL I. ADAGI.

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 8TH OCTOBER 2025

In the presence of :



..... for Appellant

..... for Respondent

..... Court Assistant

