



**Republic v Nyamohanga (Anti-Corruption Case 43 of 2018) [2019] KEMC 14 (KLR)
(Anti-Corruption and Economic Crimes) (6 November 2019) (Judgment)**

Republic v John Chacha Nyamohanga [2019] eKLR

Neutral citation: [2019] KEMC 14 (KLR)

**REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION CASE 43 OF 2018**

DN OGOTI, CM

NOVEMBER 6, 2019

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN CHACHA NYAMOHANGA ACCUSED

JUDGMENT

1. The accused John Chacha Nyamohanga alias Moses Mwitwa Mogaya faced one count. He was charged with personation of a person named in a certificate contrary to Section 384 as read with Section 349 of the Penal Code. Particulars of the offence were that on the 3rd day of January, 2007 at an unknown place within the Republic of Kenya, he uttered a document namely, a copy of Kenya Certificate of Secondary Education Certificate Number [...] to the Administration Police Service for purposes of employment which had been issued to John Chacha Nyamohanga, a Kenya Defence Forces Officer by the Kenya National Examination Council a lawful authority for that purpose, whereby the said John Chacha Nyamohanga, a Kenyan Defence Forces (KDF) Officer is certified to be holder of academic qualification and falsely represented himself to be the said John Chacha Nyamohanga named in the said certificate. The accused denied the charge and the state called 9 witnesses.
2. PW1 Falex Chacha Nyamatera, a teacher taught at Getonganya Primary School between 2009 and April, 2018. On 27th February, 2017 was approached by EACC officers who asked him whether he knew John Chacha Nyamohanga. He told them that that was a neighbor since childhood and was currently working with KDF. The father was called Charles Nyamohanga Mwese. He identified PExhibit 1 as a KCPE printout reading 1998 for Getonganya Primary School. The name on the certificate was Chacha John N. In cross-examination he informed the court that he could not tell the



people who sat for examinations that year. That he had not met the person Chacha John N. That students had to go to school with birth certificates.

3. PW2 Editor Samo Ireri was teaching at Kubweye Secondary School for 20 years since 1996. EACC officers when seeking information on some students who had learnt in that school. They were John Chacha Nyamohanga and Moses Mogaya. She recognized Moses Mogaya in court and not John Nyamohanga. She identified the school admission register for Kubweye Secondary School as MFI.2. She informed the court that John Chacha Nyamohanga was admitted in form 1 in 1999. His guardians name was Johanes M. Mwise last Primary School Getonganga Primary School and sat his KCSE in 2002 and was currently a KDF officer. On Moses Mogaya, this witness informed the court that the said Moses Mogaya joined in 1997, was born in 1980, was admitted as Mwita Moses M, guardians name was Mogaya M. Rioba, last school attended was Nyabohanse Primary School and when she met this student, he informed her that he was a police officer. That while he was in school, he was a good footballer. She identified the nominal role for Kibunye Secondary School as MFI.3 where Chacha John Nyamohanga appeared at index No. 4. In cross-examination, this witness informed the court that when students were being admitted, they had to have admission letters. That she could not vouch for MFI.2 as she never prepared it. Further the admission letter indicated from which Primary School the student came from.
4. PW3 Motera Matiko Mosiaga was the chief for Nyangoge Sub-location, Bugumbe East Location, Masaba Division, Kuria West Sub-Country for the last 25 years. He was also approached by the EACC. He knew both the accused and one John Nyamohanga Chacha. He could also recognize them. He recognized the accused in court as Moses Mwita Magaya who though in his identification was John Chacha Nyamohanga. His father was Charles Magaya Rioba. The mother came with him and was married to the late Charles. He could not tell the Primary School he went to but joined Kubweye Secondary School. When the accused went to the witness for his identification card and on interview, he identified himself as John Chacha Nyamohanga because that is the name he used in his certificates. He produced the identification application form as PExhibit 4. In cross-examination this witness informed the court that accused went to him for his ID in 2003. By then he was still unemployed. He could not tell the name this accused was given when he was born. He did not give the Id in the name of Moses. And he said in re-examination that before he gave him the Id he knew him as Charles Rioba Mogaya.
5. PW4 Paul Ndirima was the assistant director in human resource (HR) Management at the AP police service headquarters. He was also approached by the EACC. He produced PExhibit 5, 6, 7, 8, 9, 10, 4, 11, 12 and 13. The exhibits are described as follows:- PExhibit 5 was the PSC.2 public service commission form completed after recruitment dated 3/1/2007 by accused. PExhibit 6 was a response to a letter written by ministry of state for provincial administration to the ministry of state for public service which had requested for personal numbers. PExhibit 7 was a KCSE for 2002 showing Chacha John Nyamohanga attended Kubweye Secondary School and attained mean grade of C+. PExhibit 8 certified copy of Id Card for Chacha John Nyamohanga of Id No. [...] issued on 28/8/2003. PExhibit 10 a letter transferring accused from Marsabit to Molo. PExhibit 11 letter transferring accused from Molo to Kisumu East District. PExhibit 9 letter of appointment GP-24 dated 5/1/2007. PExhibit 12 letter of transfer of accused from Kisumu to Migori. PExhibit 13 letter requesting that accused salaries be paid through Co-operative Bank Migori.
6. This witness informed the court that accused was given personal no. [...]. In his application he had used Id. No. [...]. In PExhibit 5 accused had indicated he went to Nyongoge Primary School from 1990 to 1998 and Kubweye Secondary School Between 1999- 2002. Selection was done in 2006. He was appointed in 2006.



7. That PExhibit 9 was a standard letter of appointment issued to all officers dated 5/1/2007 which showed effective date of employment was 19/6/2006. In cross-examination he informed the court that wherever there was a complaint against an officer, a confidential file was opened. The disciplinary complains in the accused case was that certificates in his file were not genuine complains were to be handed over to relevant authorities. That they received a complaint that they had been paying somebody who was not John Chacha.
8. PW5 Charles Azere was the principal of Kibweye Secondary School. He was approached by EACC officers. They requested to see the documents of Moses Magaya and John Chacha Nyamohanga. From his records Moses Mogaya was admitted on 13/1/97 ADMN. No. [...] John Chacha Nyamohanga was admitted on 15/2/99 Admin. No. 701 (PExhibit 2) parent for Moses Mogaya was Mogaya C. Rioba, last school attended – Nyabohanga. For John Chacha Nyamohanga, father's name was Jones N. Mwise. Last school attended – Getonganya Primary School. From the records Moses Mwitā Mogaya did not collect his certificate in 2000 which was certificate No. [...] as he had a fee balance of Kshs.7,450. John Nyamohanga's certificate No. [...] was collected by his father Jones N. Mwise of Id. No. [...]. This was the first attempt. He sat again in 2003 and collected his certificate personally using his Id. No. [...]. Certificate was no. [...]. He produced the following documents:- PExhibit 2 – School admission register· PExhibit 3 – Nominal role for KCSE, 2002 photographs· PExhibit 15 - certificate for Moses Mwitā Mogaya· PExhibit 16 – certificate serial numbers list for KCSE, 2002 for Kibweye Secondary School· PExhibit 14 – school collection of certificate record book for Kubweye Secondary School.
9. In cross-examination he told the court that he did not prepare any of the documents, but they were through as the documents were kept in his school.
10. PW6 John Chacha Nyamohanga was the KDF officer who was also approached by the EACC. He explained that the document used by accused was his. He attended Getonganya Primary School between 1991 to 1998, sat KCPE in 1998 (KCPE certificate PExhibit 17). Then joined Kibweye Secondary School between 1999 and 2003. In 2002 he obtained a C+ (PEXhibit 13). He sat again in 2003 and obtained B (PExhibit 19). In January, 2005 he joined the KDF. Accused Moses Mogaya was ahead of him by two years. Accused was a footballer and this witness had not given him his certificate. He saw him last in 2003 in school when he worked in school and trained football for students. In cross-examination this witness informed the court that he only collected the certificate for 2003. He knew the name accused was called in school and if he gave the name John Chacha Nyamohanga that would be a surprise. His father collected the certificate for 2002. He also told the court that having a name did not justify having documents.
11. PW7 Francis Kwedho worked with the Kenya National Examinations Council otherwise known as KNEC. KNEC had been asked through a letter (PExhibit 20) by EACC to confirm examination results for Moses Mogaya KCPE 1996 and also for the following:- John Chacha Nyamohanga KCPE 1993· John Chacha Nyamohanga KCSE 2002· John Chacha Nyamohanga KCSE 2003
Through PExhibit 22 they gave the following report:-
 1. Chacha John Nyamohoga index no. 70xxxx/xxx overall result C+ genuine
 2. Chacha John Nyamohanga index no. 70xxxx/xxx for KCSE B (plain) genuine
 3. Mwitā Moses Mogaya index no. [...] KCSE 2000 D (plain) genuine
12. That another report they gave showed John Chacha N sat for KCPE in 1998 (PExhibit 23). Mwitā Moses Mogaya sat for KCPE in 1996 at Nyabohanse boys Primary School.



13. In cross-examination, this witness informed the court KNEC does not confirm identity of students, they rely on data supplied. They also do not keep certificates as those are issued to students. And when lost they also do not issue duplicates. The names are given to them by the principal and also photos.
14. PW8 was the assistant director at the National Registration Bureau. He received a letter (PExhibit 25) from the EACC requesting for particulars for a register 136A, to provide registration. Particulars of holder of Id card no. [...] and [...] and documents submitted to support the registration. Through PExhibit 26 he provided the following information:-
 1. For Id. No. [...] issued to Chacha John Nyamohanga born on 29/12/1984 from Bugembe central location masaba division of Kuria west district. Father was Jones Nyamohanga Mwise. Mother was Susan Boke Nyamohanga.
 2. For Id Card No. [...] issued to Chacha John Nyamohanga from Nyangore Sub-location of Bugembe East Location Masaba Division of Kuria West District and holder was born in 1984 father John Chacha Ikwabe, mother Sabina Nyati Machori.
15. Further from the register 136A holder of Id. No. [...] Chacha John Nyamohanga was registered from Kuria registration office on 28/3/2003 – father’s name Joseph Chacha Ikwabe.
16. For holder of Id card No. [...] Chacha John Nyamohanga was registered on 15/1/2003 from Kuria registration office. Father’s name Johanes Nyamohanga Mwise. Copies produced as PExhibit 27. We also produced exhibits PExhibit 23, 25, 26, 29, 30, 27(a) and 27(b).
17. In cross-examination this witness informed the court that the two were different people using two different fingerprints. Their system was able to capture how the person looked.
18. PW9 was the investigating officer working with the EACC. He gave details how he received a complaint in 2016 and investigated the matter. He basically reiterated the witness accounts. In cross-examination he denied having arrested accused in connection with a governor. He also did not record the statement of Mwese as he did not meet him and that Charles Rioba was since deceased.
19. The defence called 4 witnesses. DW1 was Sabina Ghati, the mother to accused. She informed the court that initially her husband was Chacha Ikwabe. Her 1st born (accused) was John Chacha who studied at Nyangoge Primary School Primary School and went to Kubwenye Secondary School whereupon he finished in 2002. She denied knowing Moses Mogaya. She also knew her chief as Motera. She informed the court that she wanted to know what accused was doing in court yet she thought he was working. That nobody had asked her about either Moses Mogaya on John Chacha. That accused scored a B and he had his certificates and it is only accused who could tell the court when he started working. In cross-examination she informed the court that it is the son who told her that he got a b however he did show her the certificate and that accused was born in 1984. DW2 was Consolata Chacha. She had known the accused since 1995 when she was married to that home. She informed the court that accused sat her KCPE in 1998 at Nyangoge Primary School and then went to Kubweye Secondary School. She knew Moses Mogaya and Moses Mwita as her in-laws children. She could not tell what he scored in Secondary School. In cross-examination she said she knew accused as John Chacha Nyabohanga and she denied knowing Motera, the chief and all that he said about the name of the father of accused being Charles Mogaya.
20. DW3 chief inspector Samwel Kishoiyan an AP sub-county commander, Kuria west denied having recruited the accused but informed the court that in order for one to be recruited, he must be in possession of original documents. those documents once subjected to KNEC for verification are photocopied and originals are returned to the owner.



21. DW4 APC John Chacha Nyamohanga alias Moses Mwita Mogaya informed the court that he went to Nyangoge Primary School up to 1998. He then joined Kubweye Secondary School and obtained a C+ in 2002. In 2005 he joined the general service unit which was later nullified. He confirmed what D3 informed the court about documents. He said he was trained in Embakasi and given personal number [...]. At the 8th month they were given letters of appointment. That after training he was sent to Marsabit before being allowed to go home. While at home he received a report that their five policemen had been burnt at Sachangwan, Molo where he had been transferred to. He used to go around with his certificates and all got burnt. He tried to get replacements from KNEC in vain. He denied knowing Moses Mogaya. That his mother was Sabina Gati and father was Joseph Chacha Ikwabe. That nobody questioned his name not even Motera Matiko (PW3) and signed PExhibit 4 on 28/5/2003. That he had worked for 14 years and was shocked about the allegations made against him. He denied knowledge of the witness (PW6) who said the certificates were his and the charges mere fabrications. In cross-examination he could not remember how PW2 remembered him. He denied particulars in PExhibit 2 and that though it had his name, Johannes N. Mwese was not his father. That he was the only John Chacha Nyamohanga in 2002 though he could not remember his index number in KCSE. He could also not see his photo in the nominal role of Kubweye Secondary School PExhibit 3 but could see that of John Chacha Nyamohanga (PW6) who was not himself. He could not explain why PW3, chief Motera said that Charles Rioba was his father. He admitted that PExhibit 7 the copy of the certificate was his, but index no. 4 certificate no. [...] was his but the certificate was not his. He also denied that on PExhibit 5 the PSC application had a name Mogaya Charles Rioba which was foreign to him. He also did not have a birth certificate. I considered all submissions.
22. The only point for determination is whether the accused on 3rd January, 2007 uttered a KCSE certificate number 2198414 to the administration police service for purposes of employment which lawfully belonged to John Chacha Nyamohang a KDF officer.
23. PW1 was a teacher at Getonganya Primary School as from 2009 to 2018. He knew PW6 John Chacha Nyamohanga a KDF officer. He produced PExhibit 1 the printout for KCPE for 1998. He informed the court that students went to school with birth certificates. PW2 also a teacher had taught at Kubweye Secondary School since 1996. He recognized accused in court as Moses Mogaya who joined the school in 1997 and was born in 1980 and was admitted as Moses Mogaya. The last school attended was Nyabohanse and he was a good footballer. PW3 also knew both accused and PW6. He identified the accused the accused in court as Moses Mwita Mogaya who though in the identification he participated in issuing was John Chacha Nyamohanga. When accused went for his identification card, he used John Chacha Nyamohanga claiming it was the name he used in his certificates, this was in 2003.
24. PW4 informed the court that the accused in his application PSC-2 dated 3/1/2007 indicated Kubweye Secondary School as the school he attended between 1999 to 2002. That the letter the letter of appointment PExhibit 9 was a standard letter dated 5/1/2007 showing effective date of employment as 19/6/06. PW5 the principal of Kubweye Secondary School informed the court that accused sat KCSE in 2000 and he did not collect his certificate no. [...]. That certificate no. 2198414 belonged to PW6. PW6 confirmed the same and added that accused whom he knew was ahead of him two years and he never gave him the certificate. From the records at KNEC, there was evidence by PW7 that accused sat KCSE in 2000 vide index no. [...] and managed a D plain whereas he had sat for his KCPE in 1996 at Nyabohanse boys Primary School. This was evidence by PW7. The national registration bureau through PW8 informed the court that accused was born in 1984 and held Id. Card No. [...]. He obtained the same on 28/3/2003.
25. A careful analysis of the above evidence shows accused was recognized by PW1, PW2, PW3 as Moses Mogaya, PW2 further informed the court that accused Moses Mogaya attended Kubweye Secondary



School between 1997 was born in 1980 and last school attended was Nyabohanse boys Primary boarding. He obtained D plain according to PW5 the principal of Kubweye Secondary School but did not collect his certificate. PW7 confirmed accused Moses Mogaya sat his KCSE in 2000 vide index no. [...] and managed a D+. This was after attending Nyabohanse Primary School. Evidence on record did not leave any doubt that KCSE certificate no. 2198414 belonged to PW6. From PExhibit 5 the application for employment form dated 3rd January, 2007, the accused declared that all information and particulars in the form were correct. I find that accused on 3/1/2007 uttered a KCSE certificate number [...] to the Administration Police Service for purposes of employment which certificate lawfully belonged to one John Chacha Mwita a KDF officer and convict him accordingly under Section 215 of the CPC Cap 75 laws of Kenya for the offence of personation of a person named in a certificate contrary to Section 384 as read with Section 349 of the Penal code.

Right of appeal 14 days

Dated this 6th day of November, 2019.

D.N. OGOTI

CM

6/11/19

Delivered on this 6th day of November, 2019.

Salad A-Court Assistant

D.N. OGOTI

CM

6/11/19

Accused present

N/A for accused

Ms Kaniu holding brief for Ms. Awino for DPP

D.N. OGOTI

CM

6/11/19

Ms Kaniu

We have no previous

He can be treated as a 1st offender.

Mitigation:

Mr. Munga:

Accused as confirmed by prosecution is a 1st time offender. Accused is the sole bread winner of a young family and his surviving mother. Accused has been very co-operative in this trial. He is remorseful. We pray for a lenient non-custodial sentence so that accused can continue providing for his young family.

Court:

Mitigation has been considered. Accused earned a salary he never deserved for 14 years. This case as other cases involving economic crimes was proved by a trail of documents which speak louder than oral evidence. The



accused was advised by the court to plea bargain. He decided to take the court through a whole log of trial which took over 1 year two months. For this he risked the highest sentence provided for. However, since he co-operated in the trial I will sentence him to a fine of Kshs.500,000 in default he will serve a jail term of 2 years.

D.N. OGOTI

CM

6/11/19

Mr. Munga:

Accused was admitted on a cash bail of Kshs.500,000 similar to fine. We pray the amount of cash bail be used as the fine.

D.N. OGOTI

CM

6/11/19

Ms. Kaniu

We have no issue with that.

Court:

The cash bail deposited by accused to be used to defray the fine.

D.N. OGOTI

CM

6/11/19

