



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA TA NAIROBI

CRIM APP 1004 OF 84

FREDRIC MBURU MUNYAPPELLANT

V e r s u s

REPUBLIC RESPONDENT

J U D G M E N T

CORAM O'KUBSU J

D N Ngatia for Appellant

C W Gtonye (Principal State Counsel) for Respondent

J U D G M E N T

The appellant was convicted on the following two counts: -

(i) Forgery contrary to section 349 of the Penal Code; and

(ii) Making a document without authority Contrary to Section 357 of the Penal Code. The appellant was then sentenced to eight (8) months imprisonment on each count, the sentence to run concurrently.

The evidence implicating the appellant on both counts is mainly that of the complainant (P W 1). The complainant was the appellant's girlfriend and she owned a vehicle Suzuki Jeep registration number KVR 252 and Yamaha motorcycle registration number KVP 523.

When the complainant was leaving for Holland, she left the car with the appellant. When the complainant came back from Holland, on the 14th January, 1984 the appellant was nowhere to be seen at the Jomo Kenyatta International Airport. The complainant looked for appellant and found him at home at Ruaka. The appellant told her that the car had problems and so was lying at a garage. The complainant gave him Kshs.5,000/- so that the car could be put back on the road. Then, on the 17th January, 1984, the complainant noticed that the logbook of his car was missing. She reported to Kilimani Police Station. She was advised to check with Gill House. When she checked the records at Gill House, she discovered that her car had been transferred to the appellant's name. She then went to Central Police Station and reported. The appellant was nowhere to be seen all this time but he was eventually arrested and charged. The complainant testified that, she had filled transfer form in respect of the motor cycle, which she sold to the appellant. She had filled her name and signed it, but left the space for

particulars of the vehicle to be transferred.

The appellant, on the other hand, testified that he bought the vehicle from the complainant and that he had paid her Kshs.40,000/- as the agreed purchase price. He said that, there was a disagreement complainant with the following sexually transmitted disease, which he contracted from the complainant.

The evidence before the lower court showed that the transfer form had been partly filled by the complainant but the particulars of the vehicle where inserted by the appellant – the appellant does not deny this. The issue was whether the transfer form had been forged or not. The complainant testified that she was selling the motorcycle and not the vehicle to the appellant. Hence, when she filled the form, she was selling the motorcycle. The learned Resident Magistrate considered the evidence before him and believed the complainant and rejected the appellant's story. The learned Resident Magistrate gave reasons why he reached his conclusion Section 345 of the Penal Code provides:-

“Forgery is the making of a false document with intent to defraud or to deceive”.

In this case, the transfer form which the complainant signed, was in respect of and intended for the transfer a motorcycle. But when the appellant got hold of the transfer form, he filled in particulars relating to the complainant's motor vehicle. His intention was clear if the complainant had sold the vehicle to the appellant, she could not have taken the trouble of reporting loss of the log-book and going to Gill House. It is significant to note that, she even retained the spare key to the vehicle. The appellant, on the other hand, decided to disappear from the scene. Looking at the behaviors of the complainant and the appellant are, one can readily conclude, that there was no sale of the motor vehicle. At all the material time, the complainant was believing as the owner of the vehicle while the appellant never believed as one who had bought the vehicle. The the complainant came back from Holland, the appellant reported to her that the car needed repairs and it was the complainant who produced Kshs.5,000/-. It is not normal, for one who has sold a car, to continue assisting the new owner with repairs.

Having considered the evidence before the lower court and the judgment of the learned Resident Magistrate, I am satisfied that the appellant was properly convicted, forged the transfer form by inserting wrong particulars and thereby falsifying the original transfer form and in so doing he had no authority from the complainant to make that document. This is a case in which the appellant thought that they could beat the complainant who was from Holland and get away with it. Nothing was said about the sentence, but in the memorandum of appeal, the sentence was described as, unwarranted and excessive. Having considered the circumstance, of the case, I am of the view that, the appellant should be given an option of a fine. Hence, the lower court sentence is set aside and in its place, I substitute a fine of Kshs.2,000/- in default, six months imprisonment on each count. The sentence on both counts to run consecutively and hence the appellant is to pay a total of Kshs.4,000/- and in default, 12 months imprisonment. The upshot of the above, is that, appeal against conviction is dismissed and the appeal against sentence is allowed by giving the appellant the option of a fine as set out above. Order accordingly.

Delivered at Nairobi, this 29th day of November, 1984.

E O'KUBASU

JUDGE



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