



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL (REVISION) CASE NO 21 OF 1979

REPUBLIC.....APPELLANT

VERSUS

MOHAMED HASSAN.....ACCUSED

JUDGMENT OF THE COURT

The accused was charged with, and convicted upon, charges of forgery, uttering and obtaining a cover note. In the words of the magistrate “the accused is the one who engineered a fraud to cheat the insurance company after his lorry had an accident”, so he was satisfied that there had been deliberate fraud. But then, without calling on the prosecutor or defence counsel, he went on, “In this case nobody lost anything. The accused is an old *mzee*. Discharged for six months.” It is true that no money was got from the fraud; but that was not the charge, although we bear that in mind. We doubt that the accused who is fifty years old qualifies on sight for the description given him. But never mind. He is fifty years old. But beyond that, the award which the magistrate made, unaided, was, on the facts patently inadequate and in law quite wrong. On the facts, it did not recognise the gravity of the offence, even taking in all that Mr Mwaura has urged, and in law because you must have a separate sentence or award for each count on which a conviction is had; see *Mohamed Warsama H T Musa Aboker Bah Majelo v R* (1956) 23 EACA 576. Of course, no real gain resulted to the accused who has, as a result of all that happened indeed lost a fair amount of money; but the fact that one is burdened with years, while for taking into account, is no cushion, of itself for criminal activity. Of course, there has been a delay which was, on the face of it, overlong between the end of the hearing and the delivery of judgment; but it does not, as we believe, offend the Constitution; nor does it go further than to be taken fully into account. Having heard what Mr Rebelo urged before us, we set aside the award made, and having taken into account all that Mr Mwaura has urged before us we set concurrent sentences of nine months each on each count. This we believe, fully takes into account the matter of delay and also all that Mr Mwaura said in respect of it and generally.

Order accordingly.

Dated and delivered at Nairobi this 26th day of September 1979.

E. TREVELYAN

JUDGE

S.K SACHDEVA

JUDGE



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