



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLANT SIDE
CRIMINAL APPEAL NO. 348 OF 2002
**(From Original conviction and Sentence in Criminal Case No. 2260 of 2001
of the Chief Magistrate's Court at Mombasa – L.N. MBATIA – SRM).**

SILVESTER KIOKO NZIOKA.....APPELLANT

-VERSUS

REPUBLIC..... PROSECUTOR

J U D G M E N T

The appellant was convicted and sentenced on three counts of forgery, uttering false document and attempting to obtain some goods by false pretences.

He now appeals against the conviction and sentence complaining that the case was not proved beyond reasonable doubt. The amount of the cheque being Shs.300,350/= could not have used as alleged, that he was not properly identified and there was no identification parade, that the case was not properly investigated and he was convicted without sufficient evidence. Lastly he submitted that the sentence was excessive and harsh.

The Prosecution case is that the appellant approached the depot of National Cereals Produce Board at Kwale and indicated to the officer (PW1) that he wanted to purchase some bags of maize, rice and beans. The officer had only maize for sale and he gave the samples to the appellant who wanted to show the same to his employers. He had introduced himself as Charles Wambua Kioko. It turned out that his real name was Silvester Kioko Nzioka.

After a few days he returned to the depot and at about 4.30 p.m. he had brought a motor vehicle to transport the maize. He had carried a cheque, which he pretended was a banker's cheque. He wanted to collect 293 bags. The price had already been agreed upon. The cheque was in the sum of Shs.300.350/= but the price of maize was 300,325/=. The cheque was written in the name of National Cereals Board.

The Officer (PW1) got suspicious of the cheque after handling it and examining the face of it. He decided to confirm the genuineness of the cheque first.

It transpired the cheque was a forgery in the handwriting of the appellant according to the evidence of document examiner. The Prosecution evidence shows that the appellant had committed the three offences he was charged with namely:

(1) Forgery of the cheque.

(2) Uttering the false cheque to the officer, PW1.

(3) Attempting to obtain 293 bags of maize from the depot of the National Cereals by presenting the forged cheque as payment for the price of the maize.

I have examined the evidence of the Defence. The appellant introduced himself, as Charles Wambua Kyalo while his name is Silvester Kioko Nzioka. He lives in Kwale Ziwani and therefore he was known to PW3 as testified. He denied the charge. He denied any knowledge of the lorry he had hired and the people who were driving it and the owner of the lorry saying that they were strangers to him.

This defence did not cast any doubt to the prosecution case that produced a document examiner to confirm forgery and the bank evidence that disclosed that the cheque was not a banker's cheque but a customer's cheque, which had been stolen, which was forged to look like a banker's cheque. The cheque had been from Meru Branch of Standard Chartered. Evidence that the appellant presented the cheque to PW1 is clear and that the appellant was attempting to load 293 bags of maize by hiring a lorry and bringing the same to the depot on National Cereals & Produce board at Kwale and requesting to be allowed to load the maize. I find the evidence of the prosecution firm and consistent.

I see no reason to interfere with the Trial Magistrate's judgment.

I uphold the conviction and sentence, which I consider lenient in the circumstances of this case.

The appeal is therefore dismissed.

Dated this 23rd day of December 2003.

JOYCE KHAMINWA

J U D G E

Judgment read in open court in the presence of: Appellant

Ms. Mwaniki

JOYCE KHAMINWA

J U D G E



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