



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Madan, Wambuzi & Law JJ A)

CRIMINAL APPEAL NO 110 OF 1976

Between

GEORGE KARORI WAINAINA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT

On 9th January 1978, we dismissed the appeal of this appellant, being a second appeal, against conviction for the offence of stealing goods in transit. We now give our reasons.

At the relevant time the appellant was an employee of the East African Railways Corporation. He was in charge of downward trains from Nakuru to Nairobi. His job required him to enter particulars of railway wagons in what has been referred to as “train sheets”. One of such wagons was wagon CLB 55009 which left Kipkelion station laden with 440 bags of maize with a consignment note made out in the name of the intended consignee (Jambo Flour Mills Ltd, Nairobi). This particular wagon and the maize in it was diverted to Dandora under a false consignment note made out in the name of the Mabati Women Group Society as consignees. The station master at Dandora had never before heard of this society. His suspicion was aroused. Investigations by the police followed.

Specimens of the appellant’s handwriting were taken. In the opinion of a handwriting expert, who gave evidence in the Magistrate’s Court, the false consignment note and the train sheet in which the wagon involved in the theft was entered were in the same hand; ie the appellant’s handwriting.

The main ground of appeal before us is that the appellant’s conviction is based upon the sole evidence of the handwriting expert without corroboration. We have been referred to *Hussan Salum v The Republic* [1964] EA 126, to say that the most an expert on handwriting can properly say, in an appropriate case, is that he does not believe a particular writing was by a particular person or , positively, that two writings are so similar as to be indistinguishable.

In our opinion there is no rule which requires corroboration of the opinion of a handwriting expert whose evidence is like the evidence of the class of other experts which it is open to the Court to accept or reject. In *Onyango v the Republic* [1969] EA 362, which was a criminal appeal heard and determined by Mwendwa CJ and Farrel J, the headnote reads that the magistrate was entitled to accept or reject the opinion of the (handwriting) expert.

We would agree that the proper role of a handwriting expert is correctly set out in the following passage

taken from the judgment of Spry J in *Hussan Salum* [1964] EA at page 128, ie:

... in saying that he [the expert] had no doubt that the forged signature had been written by the appellant, he was going far beyond the proper limits. I think the true answer was given by the expert in *Bishop of Lincoln* case, (1921) 90 LJPC 174 that 'it is not possible to say definitely that anybody wrote a particular thing'. I think an expert can properly say, in an appropriate case, that he does not believe a particular writing was by a particular person. On the positive side, however, the most he could ever say is that two writings are so similar as to be indistinguishable and he could, of course, comment on unusual features which make similarity the more remarkable. But that falls far short of saying that they were written by the same hand.

To complete the picture the foregoing may be read together with the following passage from the summing-up of Lord Hewart CJ in *R v Podmore* which Spry J quoted also in his judgment, and which, with respect, may have inspired that which he himself wrote as quoted above, ie:

Let me say a word about handwriting experts. Let everyone be treated with proper respect, but the evidence of handwriting experts is sometimes rather misunderstood. A handwriting expert is not a person who tells you, this is the handwriting of such and such a man. He is a person who, habituated to examination of handwriting, practised in the task of making minute examination of handwriting, directs the attention of others to things which he suggests are similarities. That, and no more than that, is his legitimate province.

Lord Hewart's summing-up was expressly approved by the Court of Criminal Appeal in *R v Podmore* (1930) 46 TLR 365.

It may be said that in the case before us the handwriting expert went beyond the proper limit of his field when he said that the false consignment note and the train sheet were in the handwriting of the appellant; though there was no dispute about the train sheet for the appellant's counsel in his address to the Court said it was not denied that the appellant wrote the train sheet but he said it was done in the course of the appellant's duties.

We read this to mean no more than that the handwriting in these two documents was indistinguishable from the specimens of handwriting of the appellant supplied to the handwriting expert in this case.

The magistrate and the two judges on first appeal carefully examined the evidence to see if what we might call the appellant's connection with this crime was established beyond reasonable doubt. Guided by the evidence of the expert, they came to the conclusion, we think rightly that it was through the false documents made out by him in his own handwriting. In addition, the appellant by virtue of the nature of his duties also had the opportunity to engage himself in the manoeuvre to divert the maize to Dandora. For these reasons we dismiss this appeal.

Appeal dismissed.

Dated and delivered at Nairobi this 12th day of January 1978

C.B MADAN

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JUDGE OF APPEAL

S.W WAMBUZI

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JUDGE OF APPEAL

E.J.E LAW

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR