

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT KERICHO
CRIMINAL CASE NO. E2255 OF 2019

REPUBLIC PROSECUTOR

=VERSUS=

HENRY KIPROTICH SANG ACCUSED

JUDGMENT

the accused person in this case was charged with the offence of presenting a false document contrary to section 42 (1) (e) of the Anti – Doping Act (No. 5 of 2016).

The particulars are that on 19/1/2018 at Anti – Doping Agency offices in Parklands Plaza, Westlands, Nairobi, the accused, with intent to deceive, presented a false document namely **ART PRESCRIPTION FORM** to one DENNIS KEITANY, a compliance officer at Anti – Doping Agency of Kenya purporting it to be a genuine prescription form issued by Kericho County Referral Hospital.

The prosecution called four witnesses in putting up the case against the accused person. **DENNIS KIPROP KEITANY (PW1)** works at the Anti – Doping Agency of Kenya as a compliance officer with the role of monitoring of sports federation to the Anti – Doping Rules. He told the court that on 7/3/2019 he received a memo from the legal department of the agency to investigate the accused person on allegation of production of medical records from Kericho District Hospital which were suspected to be false. He said the accused is an athlete and had participated in sports on 17/12/2018 in China and his urine sample was found to contain doping substance.

PW1 said the accused person in the tribunal case produced documents indicating treatment at Kericho District Hospital and hence the positive test of dope. The Agency made inquiries on this from the Medical Superintendent who confirmed that the documents produced were falsified. On 25/3/2019 he went and made a report at the DCI offices and statements from officers from the Hospital. PW1 recommended the prosecution of the accused person for presenting a false document.

NO. 73404 CPL WILFRED KIPRONO (PW2) is an officer from the DCI office in Kericho. He was on duty on 25/3/2019 when he was assigned to investigate this case. The accused who is an athlete had tested positive for banned substance and had given false documents. PW2 proceeded to Kericho Referral Hospital where the accused alleged to have been treated before the race and interviewed one Dr. Japhet Cheruiyot. Records of patients who attended the Hospital on 23/10/2017 was generated. The name of the athlete did not appear on the records. He said the documents presented by the accused

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DR. JAPHET CHERUIYOT (PW3) is the Chief Officer of Health at Kericho County Referral Hospital. He told the court that DCI officer from Kericho went to the Hospital and requested for verification of documents relating to Henry Kiprotich Sang which were alleged to have originated from the facility. They checked the system and found out that the documents in question were not from the facility and that Henry Kiprotich Sang had not been attended to at the Hospital. He wrote a letter to the DCI to that effect which he produced alongside the treatment and prescription forms impugned.

PATRICK RONO (PW4) is an ICT officer from Kericho County Referral Hospital. He produced records that were originated from the Hospital data base from a search that was carried out on 30/11/2018. They did not find the name of Henry Kiprotich from the records. He said when you visit the Hospital you are issued with a receipt at the reception and the data is recorded the same day. PW4 produced a verification of document and a patient register and a certificate of electronic printout.

Upon cross examination, PW4 said it is the records department that keys in the documents and that a patient starts from the records office where a receipt is then generated. He admitted at times there could be discrepancies in the system.

In his defence, the accused told the court that on 23/3/2017 he was not feeling well and he went to Kericho District Hospital where he was treated. He said he did not know what went on.

I have considered the case against the accused person. I have carefully evaluated the evidence adduced by the prosecution. I have also considered the accused's statement in defence and the submissions filed on his behalf.

Section 42 (1) (e) of the Anti – Doping Act provides as follows;

Offences

(1)A person or body who—

(e) presents to the Agency a false document or makes a false statement with the intent to deceive or mislead an investigating officer;

commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

The prosecution's case against the accused person is that the accused presented a false document being a prescription form to the Agency through its compliance officer. In a case as this, the prosecution has to show that the accused in fact presented a document to the Agency and that, the document was indeed a false document.

PW1 who is the compliance officer told the court that the accused was an athlete and had participated in sports in China. The urine samples from the accused person was found to

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contain doping substances and as a result, a tribunal was set up to look into the matter. In the tribunal, PW1 says the accused produced documents indicating that he was treated at Kericho District Hospital hence the positive test of dope.

PW4 told the court that upon searching the records from the Hospital, the name of the accused does not appear. The accused person was at no time attended to in the facility from the records that he produced.

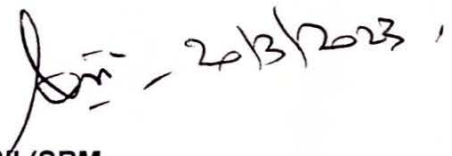
The accused on the other hand in his unsworn statement in defence tells the court that he was unwell and went to Kericho District Hospital for treatment and could not tell what happened thereafter. In the submissions, it is submitted that the evidence of PW4 exonerates the accused person when he states that not all patient's details are entered into the system and that just because a patient's name does not appear in the records does not mean he was not treated. Further, it is submitted that one would make a false document for a certain benefit and the prosecution has not demonstrated how the document would have benefitted the accused person.

From the foregoing, a document has been produced that the accused person presented to PW1 in his capacity as the compliance officer of the Agency during the Tribunal proceedings, possibly, to exculpate him from doping allegations. Investigation were conducted as to the authenticity of the document and how it originated.

The Hospital has disowned the document through PW3 and PW4 by stating that it did not originate from them as the accused never visited the hospital for treatment. In essence, it is a false document.

When it is submitted on behalf of the accused person that it does not mean he was not attended to at the Hospital just because his name does not appear in the records, and that no benefit was shown that would have accrued to him from the false document, is to fish with a melancholy bait which brings no returns.

I find the case against the accused person has been proved as required. The accused is found guilty as charged. He is consequently convicted under section 215 of the Criminal Procedure Code (Cap 75) laws of Kenya.


JAPHET BII (SRM)
20/3/2024

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re-Dennis

pro-M/S Chepkorir.

Accused - present

at-

Judgment delivered.


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pro.

No previous records.

M/S Chepkorir - H/O for O. Langat.

The accused is remorseful. He is a young man. We pray for a lenient sentence.

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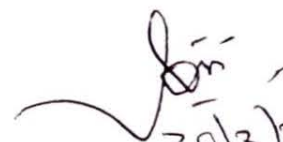
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We pray for a deterrent sentence due to the nature of the offence. This is an offence which taints the name of hardworking athletes and that of Kenya at large.

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Mitigation has been considered. The sentiment of the prosecution have been taken into account as well. The accused person is hereby sentenced to a fine of Kshs 50,000/- / 6 months in prison.


20/3/2024