

JUDGEMENT
CRIMINAL CASE NUMBER 1952 OF 2020
REPUBLIC -VRS-NAZIR BHADURALI JINNAH
NURMOHAME .

The accused person herein has been charged with the offence pretending to be an advocate contrary to Section 33 as read with Section 85(1) of the Advocate Act.

The particulars of the offence are that between the year 2013 and 2017 at Nairobi County within the Republic of Kenya with intent to defraud Harbas Singh Birdi falsely presented yourself to be an advocate of the High Court of Kenya as an associate of Khaminwa and Khaminwa Advocates.

The alternative count is that of personation contrary to Section 382(2) of the Penal Code.

The particulars of the offence are that between the year 2013 and 2017 at Nairobi County within the Republic of Kenya with intent to defraud Harbas Singh Birdi falsely presented yourself to the said Harbas Singh Birdi to be an advocate of the High Court of Kenya as an associate of Khaminwa and Khaminwa Advocates.

Count 2;

The accused herein has been charged with the offence of making a document without authority contrary to Section 357 (a) of the Penal Code.

The particulars of the offence are that on the 6th.day of August ,2014 at Nairobi County within the Republic of Kenya with intent to defraud and without lawful authority made a letter ref; NJ/HSB/94/171 for the sale of property LR. No. (4 /171 –NYARI, Nairobi addressed to Harbas Singh.

PVL 2
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Birdi purporting it to be genuine letter written and issued by the firm of Khamniwa and Khamniwa Advocates.

Count 3

The accused herein has been charged with the offence of uttering a false document contrary to Section 353 of the Penal Code.

The particulars of the offence are that on the 6th. day of August ,2014 at Nairobi County within the Republic of Kenya, knowingly and fraudulently uttered a forged letter ref; NJ/HSB/94 /171 for sale of property LR no. (4 /171 –NYARI, Nairobi addressed to Harbas Singh Birdi purporting it to be genuine letter written and issued by the firm of Khamniwa and Khamniwa Advocates.

Count 4. The accused herein has been charged with the offence of making a document without authority contrary to Section 357 (a) of the Penal Code.

The particulars of the offence are that on the 30th. day of June ,2020 at Nairobi County within the Republic of Kenya with intent to defraud and without lawful authority made a statement of account direct consultant and partner billings for Sunny Birdi purporting it to be genuine statement made and issued by the firm of Khamniwa and Khamniwa Advocates.

Count 5

The accused person herein has been charged with the offence of uttering a false document contrary to Section 353 of the Penal Code.

The particulars of the offence are that on the 6th. day of August ,2014 at Nairobi County within the Republic of Kenya, knowingly and fraudulently uttered a forged statement of account –direct consultant and partner billings for Sunny Birdi purporting it to be genuine statement made and issued by the firm of Khamniwa and Khamniwas Advocates.

Pw1 a/s/s adult English Christian male

Sonny Birdi. He testified that he lives in Kitusuri and that he is a consultant in the media space. That in 2013 he met Nazir who was known to his father and was a consultant with Khaminwa and Khamniwa Advocates. That he was going through his divorce in the UK. He avers he needed help and that accused would be the lead counsel in Kenya. He testified that he had a UK solicitor.

He wrote a letter of appointment to the UK solicitor as lead counsel for the case. The case was in the UK and he paid for him to travel to UK. PW1 avers that he sent money for his children through him which he pocketed as his costs. He sent the money through his Absa account at Westgate and that he would invoice him with letter head of Khamniwa Advocates as partner and consultant. And he sent money to account no. 2026797988 in Absa bank. He avers he has billings on 30/6/2015 letter head Khaminwa for Kshs. 32400/- that included tickets he paid for a ticket. That they would meet at the bank at Westgate.

Billing dated 30/6/2015 as MFI-1

Accused went to the UK twice and PW1 remained in Kenya.

On 9/12/2015 invoice of Kshs. 522885 he said he received payment of 15000USD and Kshs. 70000 and 500 Sterling pounds for children and he put it in summary of invoice –MFI-2

Third invoice dated 7/11/2015 for professional legal services rendered from Nazir to himself Pw1. Total was Kshs. 550,885 ref. divorce

Payments he received Kshs. as per invoice was Kshs. 224800/-.

DW1 avers that he then travelled to Canada for over 6 months and that his father went to Khaminwa advocates to follow up on his land case and then is when they learnt that Nazir had never been their employee, agent or partner.

A formal letter was written to Dr. John Khaminwa on 18/6/2020 and Dr. Khamniwa replied on 19/6/2020 –MFI-4 response was that Nazir had never been employed in any capacity in the lawfirm as alleged and the MFI-1 leeter head was never Dr. Khaminwa's letter head-MFI-5 .Dr. Khamniwa shared his letter head dated 19.6.2020.

They met severally with accused and sometimes informally. He testified that they either met at the bank or at home and communicated through email and WhatsApp and meetings

Email dated 18/10/2018 MFI-6(a)

Email dated 16/11/2018 as MFI 6 (b)

Email dated 20 /9/2013 as MFI 6 (c)

Email dated 18/9/2013 as MFI 6 (d)

Email dated 7/11/2015 as MFI 6 (e)

Email dated 12/4/2017 as MFI 6 (f)

The emails were signed off as legal consultant Khamniwa advocates and that he also drew up a child maintenance agreement on 7/11/2015 and that they had no idea that he was not a lawyer –MFI7

Pw1 avers that he did not go to the UK and he was paying his solicitor and barrister and that he did not know what accused's value was but he was still paying him never the less .In total he paid him 487000/- and he asked for his file to be sent to him so that he could forward it to the UK for costing and that was the last that he heard of him .That his father discovered that he was never an advocate working for Dr. Khaminwa. Pw1 gave the emails to the I.O and he did a certificate in this regard .-MFI-8

MFI-1-8 Exh1-8

Accused person positively identified before court=rt

He testified that his divorce went through because of his UK lawyers and that accused misrepresented himself as a lawyer,

In cross –examination Pw1 testified that he is a British citizen and he understands the laws and that one can't give legal services without being a lawyer. That accused sent a letter to the solicitor in the UK and that the letter is dated 10/7/2013

Pw2 a/s/s adult English Hindu male

Engineer Sunny Birdi .He testified that he lives in Nyari Estate and now a retired structural engineer .That in 2012 he had a case about the sale of land assets of Farhana Properties Limited in Mombasa and that he is director .The property has plot numbers Mombasa 1 block XXXX7,8 and 9 .They were three plots amalgamated into one .He engaged the services of an advocate in Mombasa Agwawalla and Company advocates and there were two company resolutions made .In the first it was decided to sell the land asstes of the company to Ibrahim and the second was the sale of proceedings to be disbursed to himself and director his co-director Mrs.Sheveen Jeeva.An agreement was drawn by the advocate on 2/5/2012 for sum of Kshs.48,500,000/- .On 29/5/2020 Mrs. Jeeva had given a letter of authority to the accused person to handle legal matters for her in the company and other legal matters .He testified that he was introduced to the accused person sometime in 2011 early 2012 by the son of Mrs .Sheveen Jeeva ,He was introduced to them because he had plots in Nairobi and the plots were sold and the sale proceeds were paid by the purchaser to Mr.Shah as he was the vendor appointed trustee and the purchaser had made three or four deposits of cash totaling to Kshs.45,000,000/- . The last payment of Kshs.5,540,000/- was paid to the accused client account after direction of county rates and he received payments in Nairobi and he purported to act for Jevva and himself .he denies ever appointing him to act for him and that he was authorized by Mrs.Jeeva to act for her and he was collecting money from the vendor appointed trustee .He avers that he was never informed when money was

sent to the accused and that Shah was to send equal amounts to him and Mrs.Jeeva and that he received Kshs.500000/- for that transaction yet he was entitled to receive Kshs.24,250,000/- less the rates of Kshs.Kshs.2,230,000/-.Balance was Kshs.17,020,000/- was till owing and that most of the money went to accused .He was collecting money from the trustee and was being paid by way of vehicles .He received three motor vehicles worth Kshs.5.1m which he said he needed for Mrs.Jeeva but he kept the vehicles .He testified that he lives in the property and that the accused person offered to do the conveyance for 1.7m for the property .Plot no. was 94/171 and that he wrote to him as legal consultant and underwriter for Khaminwa advocates and he avers the same was a falsified document and dated 6/4/2014 –MFI-9 only to realize later after paying him 1.7m that he was never an advocate at Dr.Khaminwa's firm .

Property Nbi/block /94/150 is a piece of land he bought in November 2006 and that when he started excavating for foundation a lady appeared and said it's her land and Pw2 avers that he was sued in ELC no.149 of 2007.

In Nov.2011 the case was dismissed for lack of prosecution witnesses.

He testified that he had never been to Khaminwa's office because the accused was giving them brief's in Barclays Branch, Westgate Branch or village market as they had become good friends between 2012 and 2014 and they believed he was and advocate and he had paid him 50000/- out of his fee note for Kshs. 200,000/- balance 150,000/- and that he charged for ELC case at Kshs.75000/-and balance was Kshs.225000/-

Fee note MF1-10

In October 2014 ,accused was away for six months and Pw2's case was coming soon and this prompted Pw2 to see Dr.Khaminwa and this was the first time he was meeting him and he told him that the accused person was handling his case and he said that he was handling the matter

and not accused and he told Dr.Khaminwa that he had paid accused person .The latter told him to pay 300000/- with his cashier and the paid .he said that he also sold his Embakasi land .Sale agreement was for25million .The land was infested with squatters and accused said he needed 2.8 million to get rid of the squatters and accused collected the money in cash from PW2's house .Accused obtained the money by false pretence including the fee notes .

Pw2 avers that he refunded 4.5million but the accused person did not refund him .pw2 avers he lost the money. Khaminwa avers that accused never worked for him

Emails-MFI-11

Letter to Dr.Khaminwa to confirm if accused was his employee-MFI-12 and he denied accused ever being his employee –MFI-13 .

Pw2 reported the matter to DCI and accused was thereafter arrested and charged as herein .Accused positively identified before court .

Exhibit 9,13.

Pw3 a/s/s adult female Christian English

Sophia Kaibiria. She testified that she is an advocate and Director practice standard LSK at Lavington, Nairobi .That LSK received a letter of inquiry from DCI dated 26.10.2023 and that they received it on 30/10/2023 .

Inquiry was one Nazir Bhadurah Jimnah DCI was investigating a case of impersonating an advocate –MFI14 and they responded the letter and confirmed that they do not have an advocate by the name of Nazir Jimnah .

Signed 15 –Exhibit 15. She testified that she did not know accused person

Pw4 a/s/s adult female Christian English

No.235834 C. I Eunice Njue. In June 2020 she avers that she was assigned to investigate this matter after a report was made at the station that accused had introduced himself as an advocate and a partner at Khaminwa and Khamniwa Advocates. There were email exchanges with the letter head Khaminwa and Khamniwa Exhibit 11 -8 emails

The matter was dismissed in court raising their curiosity and unearthing of the entire pretense by the accused person.

They went to the law firm only to be notified upon inquiry that the said accused person was not known to them and this shocked them and they did a formal letter dated 18.6.2020 –Exhibit 12.

In the said letter they attached the emails. A letter addressed dated 19.6.2020 disowned all the documents attached to the letter and they denied ever having known or employed accused person Exhibit 13.

The complainant made a formal report leading to the commencement of the investigations .Letter dated 22.6.2020 and a response dated 23..6.2020 disowned him and the contents .Letter from Khaminwa also never had a client by the said name .There were warnings in the letter and they ssaid that they had no contacts in Canada ,UK and USA and that the firm does not know accused person at all .Letter dated 23.6.2023 MFI-18 and that they did a miscelleaneous application of monies and the same was proved as such .

Account Absa bank -2026797988 Nazir Jimnah Misc.application
E3285/2021 MFI-18

Account statements Nasir Abdulahi Jimnah MFI-19.

They did a letter to LSK and got a respond that the accused was not a lawyer nor their member.

Accused was then arrested. Accused person positively identified before court.

Exhibit 14,16 and 19 produced.

In cross –examination it was noted that the letterhead issued by Nazir was disallowed by Khaminwa and Khaminwa even the telephones numbers were not from Khaminwa and that there was no engagement between the accused and the law firm.

The prosecution closed their case after adducing their witnesses and the court thereafter ruled that accused person had a case to answer and was put on his defense to comply with Section 211 of the CPC.

DW1 a/s/s adult male Islam English

Nazir Bhudamali Jimnah. He testified thathe lives in Nairobi and a director for Pearl Beach Hotel trading for English Point Marina. He testified that he is aware of the proceedings in court herein and that he has been put on his defence .He confirms knowing Eng.Harbas Singh Birdi and that he met him in a family function in 2011 .He denies seeing any sale agreement but that he had no specific role in it but assisting in understanding the terms as a family friend .

He denies preparing the sale agreement and he denies receiving any money from Agwawal Khan and company advocates and that he has no idea where the money went to.He denies presenting himself as an advocate in Khaminwa and Khaminwa and Comapany advocates and that he is a client in the said law firm and that he took Harbas as a client to the said law firm in 2012 -2013 .He denies receiving any money from Senior Counsel or his client Harbas .He denies preparing any fee note .

He avers that he cannot recall the detail of Embakasi conveyance.

He equally acknowledges that he knows Sunny Birdi as the son of Harbas Singh Birdi who was going through a divorce case and that he provided family support in the UK by a lawyer in the UK and that he was only there to give family support. He denies being paid any money

for the proceedings but he was facilitated. He denies seeing some of the documents and that he has never worked in the said law firm

DW1 confirms that 0713310880 is his cell phone number –MFI-19 and that the signatures look like his but not his.

This court appreciates the evidence adduced by both the prosecution and defence case and also appreciates that this matter has been in court for about 4 years.

The court has also taken great detail of the very well placed submissions and authorities therein.

However, issues for this court to determine are as follows.

- Was the accused known to both the complainants herein?
- Did the accused travel to the UK during their friendship?
- Did the accused visit and or work at the said law firms?
- Was there any money channeled to accused Absa account?
- Were there any written communications between the complainants and the accused and vice versa?
- Is the accused an advocate of the high Court of Kenya?

The Advocates Act in Kenya explicitly prohibits individuals from pretending to be advocates. Such actions are considered offences, and those who engage in such behavior are not entitled to recover fees or costs for any legal services rendered.

Additionally, documents prepared by unqualified persons may be invalid¹²³.

If you encounter anyone pretending to be an advocate, it's essential to be aware of the risks associated with their services. Always seek legal assistance from qualified professionals to ensure your rights are protected.

Pretending to be an advocate in Kenya is a serious offense with legal consequences.

The **Advocates Act** outlines penalties for such actions. Here are some of the potential consequences:

1. **Criminal Charges:** Individuals who falsely claim to be advocates can face criminal charges. This may result in fines or imprisonment.
2. **Disqualification from Legal Practice:** Those found pretending to be advocates may be disqualified from practicing law. They lose the right to represent clients and provide legal services.
3. **Fee Recovery Restrictions:** Unqualified individuals cannot recover fees or costs for legal services rendered. Clients may not be obligated to pay for services provided by impostors.
4. **Invalid Documents:** Documents prepared by unauthorized persons may be considered invalid in legal proceedings. This can have serious implications for clients.
5. **Professional Reputation Damage:** Pretending to be an advocate damages one's professional reputation. It undermines trust in the legal system and harms the legal profession.
In summary, impersonating an advocate can lead to legal, financial, and reputational repercussions. It is crucial to seek legal assistance only from qualified professionals to protect your rights and interests.

In Kenya, the offense of making a document without authority is governed by Section 357 (a) of the Penal Code. Let's delve into the particulars of this legal provision:

In section 357 of the Penal Code which provides as follows;

“357. Any person who, with intent to defraud or to deceive –

(a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing; or

(b) knowingly utters any document or electronic record or writing so made, signed or executed by another person, is guilty of a felony and is liable to imprisonment for seven years.”

In **Dennis Binyenya v Republic [2018] eKLR** the court held that;

“...the offence constitutes the following ingredients;

- i. proof of the making, signing or execution of a document and that the same was done by the accused,*
- ii. proof that the making, signing or execution was without lawful authority or excuse and*
- iii. proof that the making, signing and execution was with the intention to defraud or deceive.”*

Caroline Wanjiku Ngugi v Republic [2015] eKLR observed as follows;

“I find useful guidance in the Nigerian case of *Nelson Moore vs Federal Republic of Nigeria* [17] where it was held that in an offence of this nature, the prosecution must prove the following ingredients, namely; that the accused person knowingly and fraudulently uttered a false document, or writing or counterfeit seal. Thus, the elements of uttering a forged document are: -

- i. Uttering and publishing as true a false, forged, or altered instrument;
- ii. knowing the instrument to be false, altered, forged, or counterfeited; and

iii. intending to injure or defraud.”

Analysis

It is not in doubt that accused was well known to the complainants. They met in family set ups and this made a formidable bond beyond any doubt and trust.

There is equally no doubt that out of the strong family bonds, the meets and greets the complainants opened up to their legal issues, precisely the divorce in the UK and the sale of land in Nyari and Embakasi .

No doubt that the accused was smart and used his emotions to circumvent some strong family relationships that he had falsely earned from the victims herein.

I do agree that the law firms affected were his soft engagement. After he earned the trust of the victims on family level it was easy to present himself as a lawyer and precisely an advocate in Kenya.

In his defense accused does not deny knowing the complainants.

He does not deny getting money from them but says that he was facilitated.

Why would he be facilitated in a crisis of the victims?

The victims were desperate and accused used this to engage in his acts to get financial benefits from them.

In his defense he denies being a lawyer BUT took them to Counsel Khamninwa office. If this be true he had the opportunity in his defense to tell the court to whom he took the victims to.

The LSK have given evidence in this matter and denied accused as being their member as such Count one is proved beyond reasonable doubt that accused pretending to be one.

Count 2 and 3 and count 4 and 5 are co related.

The moment accused started pretending to be an advocate it was easy to engage in other legal parameters and this is how he engaged in the conveyancing in count 3 and 4. The documents in his account are definitely proceeds from the said transaction. The court is told that the informal meetings could be held at the Absa branch in Westgate and money deposited into accused accounts.

In his defense accused does not deny the monies into his account. Neither does he explain what they were for. This indeed was a red flag. His being out for long in Canada was the trigger and the victims were now forced to go to the law firms on their own and this is when they learnt that accused was no legal person at all and further on not known to the said law firms.

The divorce in the UK by Sonny was another falsified act. Accused travelled to the UK and he said that he was going to give the family support.

Was the said called family support to be in monetary form?

If he was this close, why did the family have to pay for the said travels?

This is a case of a well-orchestrated move by the accused of using his relations and networks for all the wrong reasons on already vulnerable persons as the case may be herein.

Empathy was key but the instant case deceit prevailed.

This court has looked at the exhibits produced, the customer opening accounts reads his number **0713310880** which accused has acknowledged in his defence. Employment details read Khaminwa and Khamniwa Advocates and legal consultant

The account number is what money was put in his account by the victims which documents have been certified by the bank as true copy of the original.

Monies have been put into his account by the victims herein into his Absa account and the same were vide a court order Misc. Criminal account E3285 of 2021 which is an exhibit in this court

In the said letter head that accused used as his, his said number is in the same wherein he asks in reference on the proposed sale property LR No.94/171 –Nyari, Nairobi, the matter in count 2 and 3

The communication on the emails which were adduced in this court are all communication from accused to the victims herein again with the issue of the divorce and the land in question

LSK has categorically given documentary and evidence in this court that accused is not an advocate within the preface of the LSK

Senior Counsel Khaminwa was also a victim here and unfortunately his law firm becomes a victim of interest as these transactions were done in his law firm's name guess why Counsel valentine Khaminwa is legally watching their brief.

The fee notes, the use of instructions and threats thereto was carrying professional indemnity too far. The invoices and equally talking of how 'fresh judges and outgoing judges thus new dates "was carrying such issues too far.

I have equally seen documents on child support where accused addresses himself as legal consultant at Khaminwa and Khaminwa advocates. n

Conclusively, this court finds that the prosecution have proved their case in all the charges beyond reasonable doubt and this court finds that accused person is guilty herein and court convicts him accordingly.

Counsel Maloba for the accused

Counsel Valentine is watching brief for the victims

Court assistant: Rabbi

Court prosecutor: Sonia

Court: Probation report on 11th. April, 2024

Accused to be in custody till then.

Judgement read and delivered in open court this 3rd. day of April, 2024.



Hon. Dolphina Alego

10.03 a.m.

Senior Principal Magistrate

Milimani Law Courts.

Later 2.11 p.m

Counsel Maloba: my client is unwell and hypertensive I pray that he be taken to hospital.

It: Appln. allowed as prayed.

I

Mon. 11.4.2024



3/4/2024