

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT

MILIMANI LAW COURTS AT NAIROBI

CRIMINAL CASE NO. 234 OF 2018

REPUBLIC.....PROSECUTION

**-VERSUS-**

DOMINIC NGIGI KAHORIA .....ACCUSED

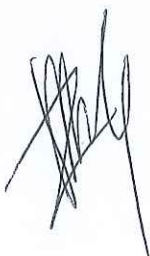
JUDGMENT

The accused person was charged with the following offences:

COUNT 1

Manufacturing in the course of trade, counterfeit goods, contrary to Section 32(b) as read with Section 35(1) of the Anti-counterfeit Act 2008, No. 13 of Laws of Kenya.

On the 6<sup>th</sup> day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found manufacturing "Moon Walker Vodka Portable Spirit namely: 1000 bottles of 250 ml each, in the course of trade using: 1 Alcoholmeter, 2 rolls of counterfeit KRA duty stamps, Moonwalker Vodka Metallic Bottle Caps, 8 Water Filter Cartridges, Moonwalker Flat boxes, Carbon Dividers, 1 Capping Machine, 2 Pedrollo Water Pumps, 1 measuring cylinder, 250 litres (1 drum) of an alcoholic spirit without authority of Moonwalk Investment Limited, the owner of Moonwalker



VODKA, Trademark No. 0076011 of class 33 all with retail value of Kshs. 125,000.00.

### **COUNT 2**

**Manufacturing in the course of trade, counterfeit goods, contrary to Section 32(b) as read with Section 35(1) of the Anti-Counterfeit Act, 2008 No.13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found manufacturing "Legend Brandy Portable Spirit namely: 20 bottles of 250 ml each, in the course of trade using: 1 Alcoholmeter, 2 rolls of counterfeit KRA duty stamps, Moonwalker Vodka Metallic Bottle Caps, 8 Water Filter Catridges, Moonwalker Flat boxes, Carbon Dividers, 1 Capping Machine, 2 Pedrollo Water Pumps, 1 measuring cylinder, 250 litres (1 drum) of an alcoholic spirit without authority of African Spirits Limited, the owner of LEGEND BRANDY, Trademark No. 82346 of class 33 all with retail value of Kshs. 2,500.00.

### **COUNT 3**

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No. 13 of Laws of Kenya.**

On the 6<sup>th</sup> day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found manufacturing "Moon Walker Vodka Portable Spirit namely: 1000 bottles of 250 ml each, in the course of trade without authority of



Moonwalk Investment Limited, the owner of Moonwalker VODKA, Trademark No. 0076011 of class 33 all with retail value of Kshs. 125,000.00.

**COUNT 4**

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No. 13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found manufacturing "Legend Brandy Portable Spirit namely: 20 bottles of 250 ml each, in the course of trade without authority of African Spirits Limited, the owner of Moonwalker VODKA, Trademark No. 82346 of class 33 all with retail value of Kshs. 2,500.00.

**COUNT 5**

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No. 13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found in possession of "an alcoholmeter" being a means used for the purpose of counterfeiting valued at Kshs. 3,500.00.



### COUNT 6

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No. 13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found in possession of 960 pieces of Moonwalker Vodka aluminium Ropp Caps @ Kshs. 4.50 being a means used for the purpose of counterfeiting Moonwalker Vodka Portable Spirits valued at Kshs. 4,320.00.

### COUNT 7

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No.13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found in possession of 1 Drum of 250 Litres of Alcoholic Spirit being a means used for the purpose of counterfeiting alcoholic spirits valued at Kshs. 73,000.00.

### COUNT 8

**Having in possession in the course of trade, counterfeit goods, contrary to Section 32(a) as read with Section 35(1) of the Anti-Counterfeit Act 2008, No.13 of Laws of Kenya.**

On the 6th day of February, 2018 at about 9:00 p.m. at Ruai, Kamnyonge Area, within the County of Nairobi you were found in



possession of 1 Capping Machine being a means used for the packaging of counterfeiting Moonwalker Vodka Portable Spirits valued at Kshs. 200,000.00.

The prosecution called a total of eight witnesses. PW1, Head of Operations at Moonwalk Investments Limited stated that on 6<sup>th</sup> February, 2018 he received a phone call from an officer from Anti-Counterfeit Agency (ACA) asking him to go to Ruai where they had found their products being manufactured. He proceeded to the house where he had been directed and found three people who had been arrested one of them being the accused. There were bottles which contained alcohol and had their labels and he also saw raw materials. He also stated that the bottles were similar to theirs. He was given samples of the alcohol for testing and he also lodged a complaint.

PW2, a Quality Control Supervisor, at Moonwalk Investments Limited testified that she went to ACA godown and took samples for the impounded products for analysis. She was able to ascertain that the products did not meet their company standards. For instance, their alcohol content was 38% while the two samples taken were 30.30% and 26.75% methanol content were low and could not be detected, the samples had gin flavour while theirs had vodka. The samples also had foreign particles meaning that they were not produced in hygienic conditions.

PW4, a Manager, Organic Chemistry in Testing and Metrology Directorate at the Kenya Bureau of Standards (KEBS) stated that on 8<sup>th</sup> March, 2018 he received three samples from his colleague PW3

for testing of parameters such as ethyl (ethanol), specific gravity (density) and methanol content. He went ahead and carried out the testing and analysis. All tests failed except for methanol which was not detected. He prepared reports and produced them as exhibits.

PW6, an Enforcement Officer, at K.R.A testified that they received a letter dated 27<sup>th</sup> February, 2018 from ACA and were requested to verify some excise stamps which had been affixed on the Moonwalker Vodka. Upon analysis, using a machine, the same were found to be counterfeits. PW7, the arresting officer testified that on 6<sup>th</sup> February, 2018 he was instructed to join his colleagues and ACA officers for an operation on manufacture of illicit alcohol in Ruai. They were acting on intelligence reports and raised the accused person's house where many people ran away including him. Some people were found distilling and packaging alcoholic beverages. They recovered ethanol in drums, K.R.A duty stamps, stickers and labels for different brands and moonwalker vodka amongst other items. Photos of the scene were taken and they pursued the accused and arrested him in a bar. They tracked him using his phone number that they were given by the people who were found in the premises.

PW7 went on to produce a share certificate for the premises which was in the name of the accused. PW8, an officer from the Anti-Counterfeit Agency testified that he was with PW7 when they conducted the operation. He reiterated the evidence already tendered and added that the people who were found at the premises confirmed that the accused was their employer. He added that an inventory was





prepared for all the seized items which were taken to their godown at Mombasa Road. He also explained the steps taken in the analysis of the exhibits/samples at KEBS as already stated. He went ahead and produced the marked documents as exhibits. Upon cross-examination PW8 maintained that the premises was used for manufacture of illicit alcohol and it belonged to the accused. At the close of the prosecution case, the accused person was placed on his defence and he gave sworn testimony.

The accused person denied operating the illegal manufacturing plant and maintained that it did not belong to him. However, he admitted that the share certificate produced as Exhibit 12a belonged to him. At the close of the defence case, submissions were filed which I have duly considered.

#### **ISSUES FOR DETERMINATION.**

1. Whether the accused manufactured in the course of trade, counterfeit goods.
2. Whether the accused had in possession in the course of trade, counterfeit goods.

**Section 32(a)(b) of the Anti-Counterfeit Act provides: -**

**It shall be an offence for any person to.**

- a) Have in his possession or control in the course of trade, any counterfeit goods.**
- b) Manufacture, produce or make in the course of trade, any counterfeit goods.**



On the first issue for determination, the house that was raided in Ruai had items used in the manufacture of illicit alcohol and samples of the product were taken to KEBS for analysis and the same did not meet the required standards. Reports were produced to this effect. The tests were done by both Moonwalker staff and another one from KEBS. A complaint was lodged by PW1 as per the regulation and paid the requisite fee. Upon further investigations by PW7 and his colleague who has since retired, they established from Embakasi Ranching that the plot where the business was going on belonged to the accused. A certified copy of share certificate was produced to that effect hearing his name and ID number. In his defence, he did not dispute being a member of the said group but maintained that he had not been allocated a parcel of land. When police officers raided the premises, some people escaped to evade arrest and those who remained behind gave out accused person's phone number which was used to track him and was arrested in Ruai.

The circumstantial evidence surrounding ownership of the premises and arrest of the accused only points to him as being the owner of the manufacturing plant for illicit alcohol. His defence on this is a mere denial and the same is rejected. I find that Count 1 was proved against the accused. However, in Count 2 which relates to Legend Brandy, no witness testified on the same.

On the second issue for determination, the word possession means **“having access to and physical control over the thing that a person is in possession to deal with it as an owner could do to**



**the exclusion of others.”** The accused having been found to be the rightful owner of the plot where manufacturing of illicit alcohol was going on, then it is clear that he was in possession of the counterfeit goods. I find that Count 3 was sufficiently proved. Count 4 relates to Legend Brandy where no one testified. In Count 5, 6 and 8 the items were not produced as exhibits and nothing much was said about them. In Count 7, no test report was produced for the alcoholic spirit listed in the charge sheet specifically.

In the end, I find that the prosecution case was proved beyond reasonable doubt in Count 1 and 3 and the accused person shall be convicted accordingly. However, he is acquitted in Court 2, 4, 5, 6, 7 and 8 under Section 215 of Criminal Procedure Code.

Dated and delivered in open court on 28<sup>th</sup> October, 2022.

In the presence of: -

Court Assistant Kigen & Fardowsa

Prosecutor Omariba

Accused – Present

14 days right of appeal explained.



**HON. Z. ABDUL**

**SENIOR RESIDENT MAGISTRATE**

I Certify that this is a true copy  
of the Original

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**CHIEF MAGISTRATE  
MILIMANI LAW COURTS**