

**REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE'S COURT AT KITALE**  
**CRIMINAL CASE NO. 3268 OF 2014**

**REPUBLIC .....PROSECUTOR**  
**VERSUS**  
**AHMED HASSAN .....ACCUSED**

**J U D G E M E N T**

The accused person **AHMED HASSAN** is charged with 4 counts of having in Possession in the cause of **Trade Counterfeit goods Contrary to Section 32(a) as read with Section 35(1) of the Anti -counterfeit Act, 2008 Laws of Kenya.** That on the 24/5/2014 at 2.00 pm in his shop namely **Mashaala communication** at Lodwar stage in Kitale town within Trans -Nzoia County had possession of 13 mobile phones valued at Kshs 154,000/- calculated to be taken as Samsung mobile phones which are protected goods under trade mark No. 53074 owned by Samsung Electronics Company Limited of the Republic of Korea. That in the said shop were also 38 mobile phones valued at 114,000/- calculated to be taken as Nokia mobile phones which are protected goods under Trade Mark No. 50125 owned by Nokia Corporation of Finland.

That on the 24/5/14 at his **Masalani communication shop** located at Lodwar bus stage in Kitale town did have in possession 10 mobile phones valued at Kshs 177,000/- calculated to be taken as Samsung mobile phones which are protected goods under Trade Mark No 53074 owned by Samsung Electronics Company . Limited of the Republic of Korea. That in the same shop were found 16 mobile phones valued at Kshs 48,000/- calculated to be taken as Nokia phones which are protected goods Under Trade Mark No 50125 owned by Nokia corporation of Finland. He plead not guilty to the 4 counts.

The prosecution in their case called 6 witnesses:-

PW1 - Samuel Gitua Mbugua.

PW2 - John Paul Machana

PW3 - No. 76948 PC Benard Wasike

PW4 -Elena Murari

PW5 - Sammy Arekai Sarich

PW6 - William Onyango Olango.

The accused was represented by advocate Wanyama. He gave his defence and called one witness - DW2 - Isaack Nur Osman.

The prosecutor in this case filed his written submissions on case to answer and none on conviction or not at close of defence case on 11/5/16.

**PW1** in his testimony told court that he was legal officer Samsung Electronics, Nairobi. That he had power of attorney to represent Samsung company regarding counterfeit goods relating to Samsung company Ltd. That effect of counterfeit goods was reducing of consumer faith in a company's product.

**PW2** gave evidence that on 24/5/14 was in Kitale town with PW5 and Pw4. That they visited Mashaala and Msalani shops. That they found counterfeit Samsung and Nokia phones. That 23 were of Samsung make. That they seized the counterfeit phones. That the phones were later checked and confirmed counterfeits.

**PW3** told court that on 24/5/15 he was with PW2, PW4 and PW5. That they found counterfeit phones in Mashaala and Msalani shops in Kitale. That one Hassan was selling the shop. That Hassan called in the accused and they arrested accused is owner of the two shops selling counterfeit phones. They charged him.

**PW4** was a counterfeit goods inspector. She reiterated evidence of PW2 about events of 24/5/2015, the same case was for PW5 that they raised inventory of the phones seized from the 2 shops herein manned by one Hassan who implicated the accused herein.

**PW6** testified and demonstrated that the Nokia phones found in the 2 shops were not genuine. They were counterfeit is alleged. He demonstrated it well to court.

**The accused** in defence told court that he is a businessman in Kitale dealing in clothes at Nyayo Market stall No. 48; Allutta shop. He showed his permits covering 2013 to 2016. That he was called to Kitale stage on 24/5/14 by 2 Garre boys: Yunis and Ibrahim over the counterfeit phones and police presence. That police confiscated them and he came in as Garre elder to reason with police. That the two shops were not his, that the counterfeit phones were not his at all. That Ibrahim and Yunis are at large. That police did not arrest them.

**DW2** told court that accused dealt in clothes and was not owner of Mashaala or Masalani shops as alleged. That accused was arrested when he intervened when the counterfeit phones were confiscated by police.

That accused was chairman Gare welfare Group Kitale and so had to intervene for the boys selling in the 2 shops.

From the evidence on record, the prosecution demonstrated well that the Samsung phones and the Nokia phones found in the 2

**OSMAN** - The phones are 13 + 38 + 10 + 16 = 77. They be destroyed. They are in charge sheet. Section 28(3) be complied.

**COURT:** The 77 pieces of counterfeit phones be destroyed. Typed copy of proceedings be supplied to prosecution.

**P. C. BIWOTT**  
**SENIOR PRINCIPAL MAGISTRATE**  
**22/9/16**

26/9/2016

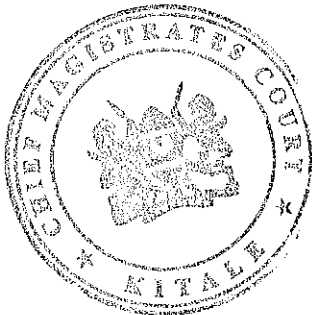
Coram: P.C. Biwott SPM

Court clerk: Abuya


Accused - present

**COURT:** On the strength of Cash Bail depositors letter dated 23/9/2016, the cash bail herein be released to Ahmed Durow Hassan as requested.

**P. C. BIWOTT**  
**SENIOR PRINCIPAL MAGISTRATE**  
**26/9/16**



I CERTIFY THIS IS A TRUE  
COPY OF THE ORIGINAL.

  
.....  
Senior Resident Magistrate - Kitale  
Date:..... 6 .....

shops were counterfeits. They were not genuine. They did not however prove who was the owner of the 2 shops. The two boys selling in the shops were not arrested. They are not witnesses.;

There are no licences linking accused to ownership of the shops. Accused's defence creates doubt. I give him benefit of that doubt. Under Section 215 of the Criminal Procedure Code I acquit him in the 4 counts accordingly. Right of Appeal 14 days.

Judgement delivered in open court this 22/9/2016 in presence of Mr Osman for prosecution

The accused and his counsel Mr Wanyama.

**P. BIWOTT**  
**SENIOR PRINCIPAL MAGISTRATE**

**ORDERS:** 1) Cash bail in court for accused be released to depositor.

2) The 23 counterfeit phones (13 Samsung, plus 10 Nokia) be destroyed in presence of the prosecutor (Osman), Executive Officer of this court and one officer from Kitale DCIO's office.

**P.C. BIWOTT**  
**SENIOR PRINCIPAL MAGISTRATE**

**22/9/16**