

**REPUBLIC OF KENYA**  
**IN THE PRINCIPAL MAGISTRATE'S COURT AT OYUGIS**  
**CRIMINAL CASE NO. 547 OF 2019**

STATE.....PROSECUTOR

-VERSUS-

OYUGIS SUPERMARKET LTD.....1<sup>ST</sup> ACCUSED

PATEL RAJENDARAKUMAR KHODABHAI.....2<sup>ND</sup> ACCUSED

MAHESHKUMAR KHODHABHAI PATEL.....3<sup>RD</sup> ACCUSED

**28/8/2019**

Magistrate-Hon.C.A Okore-SRM

Prosecutor-Kerubo

Court clerk-Aduda

Interpretation English/Kiswahili

Accused present

Represented-N/A Accused 1 use Kiswahili

Accused 3 use Kiswahili

The substance of the charge(s) and every element thereof herein been stated by the court to the accused person in the language that he/she understands, who being asked whether he/she admits or denies the truth of the charge(s) replies in kiswhaili

Count 1

Accused 2-It is true

Accused 3-It is true

Court; Plea of guilty entered.

**C.A. OKORE-SRM**

**28/8/2019**

COUNT 2

Accused 2-it is true

Accused 3-It is true

Court; Plea of guilty entered.

**C.A. OKORE-SRM**

**28/8/2019**

**Pros, Mr. Adera for pros**

On 17/4/2018 Green industries ltd proprietor of Ajab trade mark laid a formal complaint with A.C.A under Section 33 of the Counter Feit Act as read with regulation 13 of A.C.F regulations 2010 . Formal complaint consisted of Form AC. 48 which I wish to produce AS Exhibit. I and on indemnity from ACA9 which I produce as exhibit 2. Affidavit sworn by Shem Adoda Omolo of security manager of Grain industries which I produce as exh.3 and certificate of Trademark for Ajab-Exhibit 4. Evidence of incorporation of complainant-exh.5.

On 18/4/2019 following day inspector Regina Lumumba accompanied by inspector Mary Kihama with Oyugis Police station officers and Shem Adoda Omollo visited Oyugis Supermarket in plot 169 Moi road Oyugis town . On arrival they met Patel Accused 2 and inspected the premises. They found 21 packets of Ajab Home baking flour and an assortment of packaging materials. They were entered in inventory form AC, Accused2 signed by Accused 2 as evidence of seizure. I wish to produce it exh.6 a and b.

After that comp.....Industry ltd on 23/4/2019 applied for inspection of seized goods in form AC A4-exh.7.

Inspection was done on samples, 2 packets of seized goods from ACAS-Exhibit 8.

They did analysis and forwarded a report for the laboratory. Analysis to be – Exh.9 dated 29/4/2019.

In the analysis it was concluded the seized goods didn't come from their industry. On 4/7/2019 Inspector Regina Lumumba took the samples to Government chemist in form ACA-Exhibt 10.

Government Chemist received the samples on 4/7/2019-exhibit 11.

Government chemist produced a report carried 5 parameters dated 9/8/19 seized goods tested weevils and so unfit for human consumption. Report to be exhibit 12. Inspector Lumumba also forwarded samples to Public Health on 16/5/2019 in form AC A6-Exhibit 13

Public Health report dated 30/7/19-Exhibit 14.

As such an official search of the Oyugis Supermarket-Exh.15

Accused 3 and 2 are directors of the supermarket.

On the day of seizure inspector Regina Lumumba retained a single business permit in Accuseds name for current financial year to show they were trading what remained after samples were taken in court. I wish to produce them . Expiry date was 20/10/2019 but goods have been infested by weevils-Exhibit 17

-Packaging packets –Exhibt 18

Accuseds were arrested and charged initially in Criminal case 441/19 which was withdrawn but were charged again today. Accused are in the dock.

**C.A. OKORE-SRM**

**28/8/2019**

Accused 2-Factsare correct

Accused 3-Facts are correct

Court: Plea of guilty entered for each accused in each count . Each accused CPC.

**C.A OKORE-SRM**

**28/8/2019.**

PROS, Provisions of Section 28 (3) that requires that upon conviction

- 1) Counter feit goods be forfeited to the state and destruction.
- 2) Destruction be at the cost of the suspect.

Sec.3,5,(3) of Counter feit Act requires court to consider on sentencing the risk to human and animal life. Goods are a risk and danger to human and animal life.

-And evidence that accused has disclosed to an inspector inter alia the service of Counter feit goods.

-Accused have failed to disclose the source of packets used to package flour.

-Accused 1 Accused 2, and Accused 3 are not 1<sup>st</sup> offenders. Court to take judicial notice that Accused 1 had been charged in Criminal 253/18 with offence of being I Possession of Counter Feit goods.

-I urge court to impose severe sentences as provided u/s 31(b) of Counter Feit goods Act.

**COURT:** Sentencing at 11.30 am. Accused to remain in custody.

**C.A. OKORE-SRM**

**28/8/19**

**Later at 12.00 PM**

Coram as before

Accused-both present

Mr. Adera for prosecution. Present

Pros; matter is for sentencing

Court: Noted

**C.A. OKORE-SRM**

**28/8/19**

COURT: Accused 2 and 3 are given a chance to mitigate.

Accused 2-Pardon me. I' ll not do it again.

Accused 3-pardon me. I'll not do it again. I am sorry.

COURT: sentence

- 1) I have considered the mitigation made by accused 2 and 3 . I have also considered the sentiments of the prosecutor Mr. Adera herein and I do hereby under as follows:

1. That each accused be and is hereby fined Kshs. 13,200/= in default (3) three months imprisonment on each count.

Total fine for each accused is Kshs. 26,400/= sentences to non consecutively.

R/A 14 days

2) That this counterfeit goods be and are hereby forfeited to the state for destruction.

3) The cost of destruction of the said goods be borne by the accused persons herein.

4) That the accused persons be and are hereby directed to submit remnants of the counterfeit goods related to the ones before court in their possession; if any and/or the tools being used to make the counterfeit goods, if any to the state for destruction.

5) The destruction of the said goods and/or tools to be supervised by

-Executive officer of Oyugis law Courts.

-Officers from the counterfeit authority.

-OCS Oyugis police station.

Orders accordingly.

R/A 14 days. Explained to the accused persons in Kiswahili by court clerk.

**C.A. OKORE-SRM**

**28/8/2019**

I Certify that this is a true copy  
of the original  
..... MAGISTRATE.  
OYUGIS.  
Date: 29/10/2019