

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT MILIMANI LAW COURT

CRIMINAL CASE NO. 1662 OF 2014

REPUBLIC OF KENYA.....PROSECUTOR

-VERSUS-

SOUND LINE STUDIO SYSTEMS

LIMITED.....1ST ACCUSED

CHRIS KIZITO.....2ND ACCUSED

ANTONY OMBAYO.....3RD ACCUSED

JUDGEMENT

The aforesaid three persons, hereinafter to be referred to as accused 1, accused 2 and accused 3 respectively face charges of being in possessions in the course of trade, counterfeit goods, contrary to section 31 (a) as read with section 351 (1) (a) as of the anti-counterfeit act 2008, laws of Kenya, in three counts being counts 1, 2,3 and 4 particulars are as follows;

Court 1: Accused 1, Accused 2 and Accused 3 being a limited company and directors with others not before court on 25th August 2014 at about 1.50 pm at a business premises located along Rubai road on plot No. 209/79/714 in Buruburu within Nairobi county, did have in their possession in the course of trade four Yamaha solo guitars each valued at Ksh. 6,500.00, seven Yamaha box guitar each valued at Ksh. 4,500.00, five Yamaha box electricity guitars each valued at Ksh. 5,500 and one box guitar valued at Ksh. 5,500.00 the goods purportedly bearing Yamaha brand name calculated to be confused with protected goods made by

Yamaha corporation, Japan made under their registered trade mark, all goods valued at Kshs. Eighty-six thousand, five hundred shillings (Kshs. 86,500.00).

Counts 2: That Accused 1, Accused 2 and Accused 3, being a limited liabilities company and directors, with others not before the court, on 28th August, 2014 at about 1.50 pm at a business premises located along Rubai road on plot No. 209/79/714 on Buruburu within Nairobi county did have in their possession in the course of trade, Dido Yamaha mixers each valued twenty thousand shillings, all purportedly bearing Yamaha brand name calculated to be confused with protected goods made by Yamaha corporation Japan under the registered trade mark, all goods valued at one hundred and eighty thousand shillings (180,000.00).

Count 3: Accused 1, Accused 2 and accused 3 being a limited company and directors, with others not before court, on 24th August, 2014 at about 1.50 pm at a business premises located along Rubai road on plot No. 209/79/714 in Buruburu within Nairobi county did have in their possession in the course of trade, peary amplifier each valued at forty-five thousand shillings and twenty-nine thousand shillings respectively.

Purportedly bearing peavey and Yamaha brand name calculated to be confused with protected goods made by Yamaha corporation Japan made under registered trade mark, all goods valued at seventy-four thousand shillings (Ksh. 74,000.00) and

Count 4 – Accused 1, Accused 2 and Accused 3 being a limited company and director with others not before court on 28th August, 2014 or about 1.50 pm at a business premises located along Rubai road on plot No. 209/79/714 in Buruburu within Nairobi county, did have in their possession in the course of trade two peavey GP4 and those peavey full range over valued at Ksh. Fifty thousand

shillings respectively purportedly bearing peavey brand name calculated to be confused with protester goods made by Yamaha corporation Japan made whos registered trade mark all goods value of two hundred thousand shillings (ksh. 200,000.00).

In support of the charges, the prosecution called a total of five witnesses.

Joe Kamau Kibe pw 4 testified that his brother Christpher Thanga Kibe and he were the proprietors of credible sounds, where George Mutani pw 1 said he worked as a technical manager as at the time of his evidence on 3/6/19 and was Assistant technical manager by 2014 with the said complainant.

Both Pw1 and pw 4 testified that credible sounds was the authorized agent to Kenya for Yamaha Corporation. Peavey electronics corporation hereinafter to be referred to as Yamaha and Peavey respectively.

Pw 1 testified that the duties of credible sounds as an authorized agent of Yamaha and Peavey was to sell and report product of the aforesaid 2 companies.

Pw 4 testified that in the course, a customer took an amplifier to credible sounds to be repaired. Pw 4 went on to testify that on examining it, they realized it was not a genuine peavey product. Pw 4 said he filed the complaint/exhibit 15 (a) with the anti-counterfeit agency to which was attached the affidavit pexhbit 15 (b) and the indemnity pexhbit 15 (c), the power of Attorney by peavey electronics corporation appointing credible sounds as its counterfeit agent, dated 22/4/2010 and trade mark registration certificate effective from 19/10/2007 to 19/10/2027 for trade mark No. 62194 in respect of peavey electronics corporation of 5022 Hatley Peavey Anne, meridian Mississippi, ms 39305, united states of America pexh 16 (a).

In respect of Yamaha and attend the requisite documents which he duly produced. They are affidavit pexhibit 16 (b), indemnity pexhibit 16 (c) certificates for registration of trade mark in respect of Yamaha corporate from members 15946 and 15647 both dated 22/9/15 was produced as exhibit 13 (a) and (b) respectively.

The complainants were co-investigate by Yusuf Osman Ahmed pw 5 and Hellena Mrari pw 3 both Anti – Counterfeit officers. Pw 5 testified that pw 3, pw 4, 2 police officers from Buruburu police station and him went to a shop known as sound line studios situate along Rabai road. Where they found a man who introduced himself as Quintine Adhiambo.

When the officers asked for the business licence, Pw 3 and Pw 4 testified that he gave them the single business permit pexhibit 17 No 067282 issued to sound line studio systems on 27/2/2014, to engage in the business of sale electronics.

Pw 4 testified Quintin told them he was an employee and they told him to call his employer. That the person who responded introduced himself as Chrise Kizito. That they introduced themselves and the purpose of their visit and requested him if they could search the shop to which he obeyed and that on search they found suspected counterfeit produce which they listed on the inventory pexhibit 10.

The seized items were inspected by pw 1 who testified he found them to be counterfeit. He produced his reports as per exhibit 10 and 11.

Pw 2 Keisuke Suzuki a sales marketing general manager with Yamaha music suit in Dubai said he came into the country and carried an analysis of the seized good. He produced his report dated 25/7/19 as exhibit 12.

Pw 5 testified that a search of particular of sound line studio systems at the office of the department of the registrar general yielded the search result pexhibit 20 (b)

reference sound line studio systems limited, showing that the said sound line studio systems limited was registered on 22/2/2013 under registration number COR/2013/95530 with four directors all Kenyans of P.O Box 17097 – 00510, Nairobi namely Kizito Cris Lulie Howard, Kakande Harold and Antony Ombayo holding 200, 300, 300 and 100 shares respectively within registered offices being at LR No. 79/741 Watedi plaza, Mumias road, Buruburu Nairobi, P.O Box 17097 – 00510 Nairobi.

Pw 3 and 5 testified that on completion of investigation the accused was arraigned to court.

The accused in sworn defence denied all the charges. He said his name is Cris Kizito Abbey, a Ugandan, residing at Langata and not Buruburu. He produced his passport No. 131663229 in proof of his identity saying that in view therefore he is wrongly charged. He said ID/No. 30463516 indicated on the charge sheet is not his. He said his name does not even appear on exhibit 20 (a).

He said he earns his bread from selling men clothes and does not know sound line studio nor has never done any business with them. He said he runs his shop online and he also deals with customers one on one.

He said that the day he was arrested, someone called him (accused) to supply him with clothes and invited him (accused) to the area around chicken inn Buruburu. That when he got to the place, he was arrested. Upon which that he produced his passport in proof of his identity.

Subsequently, he was taken to court. He did not call any witness. Upon close of his defence, his advocates on record Kiragu Wathuta & Co. Advocates as well as the prosecution filed submissions, which I note and here below analyzed the evidence adduced by the prosecution witnesses and the defence of the accused.

From the evidence of Pw 1 to 5 and the reports, exhibits 10, 11, and 12, I find the items the subject of counts 1, 2, 3 and 4 are counter feint meant to pass on as genuine/peavey/Yamaha products.

From the corroborate evidence of Pw 3, 4 and 5 the said items were recovered from a shop which as per the Nairobi City County business permit pexhibit 15 is known as sound line studio systems situated on plot No. 209/79/741 Rabai road.

It was testified by pw 3, 4 and 5 the accused is one of the directors of sound line studio systems limited and that he was present during the recovery allegations the accused denied as captured in the summary of the defence herein.

The search Pexhibit 20 (b) shows the aforesaid company has four directors of the four only one purportedly the accused was brought to court.

From the passport of the accused No. B1663229 it shows he is a Ugandan. The one referred to on exhibit 20 (b) is shown to be a Kenyan. More thereto the spelling of the names differs in that the name on exhibit 20 (b) is Chris Kizito while the one on exhibit is Kizitu Cris Abbey.

The difference in the name Chris is notable in that the one on Exhibit 20 (b) has no (b). Additionally, the charge sheet shows passport No of accused as 130463516 yet accused's passport No. as per Dexhibit 1 is 131663229. The authenticity of the passport the accused produced as exhibit was not questioned.

I therefore find it is genuine proof of his identification from which therefore I find that he is before the Chris Kizito of identification 130463516, a Kenyan neither the one of Kenyan Citizenship named on pexhibit c.

Consequently, I find the prosecution has failed to establish that the accused before the court is the one shown as one of the directors of sound line studio systems limited. No other one named to the charge sheet.

I find prosecution evidence in identification the Chris Kizito director of Sound line studios in view of the defence of accused that he is not the person the prosecution say he is inconclusive and fair to identify the accused as the person that was running the shop from which the items herein were recovered.

The defence of the accused therefore that had a wrongly charged is weighty and overwhelming as against the prosecution evidence on record. His alibi defence is credible, in view of which I find none of the charges herein has been proved against the accused beyond reasonable doubt.

I enter a finding of not guilty and hereby under section 215 of the cpc, accordingly acquit the accused of all charges herein.

Right of Appeal 14 days.

M. W. NJAGI (MS), SPM

14/12/21

Judgment is delivered, dated and signed in open court in the presence of Bett for prosecution, Abdi court Assistant and in absence of accused in accordance with section 168 cpc as judgment is an acquittal and is presence of Miss Ndaka for accused.

M. W. NJAGI (MS), SPM

14/12/21

Court – Having found the items the subject of the charges herein are counterfeit an order is hereby made that they are confiscated with a further order that they be destroyed, by the investigating officer in presence of the complainant and the courts executive Administrator.

Report on the destruction be filed. The destruction be after 14 days if no appeal is filed.

M. W. NJAGI (MS), SPM

14/12/21

I certify that this is a true copy
of the Original

RD

CHIEF MAGISTRATE
MILIMANI LAW COURTS

20/21 2023