



REPUBLIC OF KENYA



**Kihoro v Republic (Criminal Appeal 181 of 2023)  
[2024] KEHC 11336 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11336 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 181 OF 2023  
DR KAVEDZA, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**WANYIRI KIHORO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. J Gandani C.M) on 29th October 2021 at Kibera Chief Magistrate's  
Court Criminal case No. 5220 of 2021 Republic vs Wanyiri Kihoro)*

**JUDGMENT**

1. Wanyiri Kihoro, the appellant herein was charged with two counts of forgery contrary to section 349 of the *Penal Code* and two counts of Making a document without authority contrary to section 357(A) of the *Penal Code*. He pleaded not guilty and after a full trial, he was convicted to pay a fine of Kshs. 100,000 on each count in default to serve twelve (12) months imprisonment for each count.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. The appellant raised nine (9) grounds which have been coalized as follows: The appellant challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash the conviction and set aside the sentence.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).
4. The prosecution's case was as follows: PW1, Surindapal Singh Syan, son of the late Ranjit Singh Syan, testified regarding a disputed property on LR No. 1/205 in Kilimani, Nairobi. After his father's death, PW1 approached the appellant who was living on the premises as a tenant at the time over unpaid



- rent arrears. In 2008, during discussions about settling the arrears, PW1 learnt from a friend that the property had allegedly been transferred to the appellant's wife, Dr. Wanjiru Kihoro, via a conveyance dated January 21, 2003.
5. PW1 disputed the conveyance's authenticity, asserting that the signature attributed to his father was forged. The conveyance was purportedly prepared by Messrs I. Kapila Advocates, who subsequently denied having drafted the document. The appellant claimed the property now belonged to his wife, negating any rent obligation. PW1 initiated civil proceedings, during which the appellant produced a sale agreement and cheque photocopies. PW1's father's business partner confirmed that no payment was ever received. Suspecting forgery, PW1 reported the matter to the CID, and an investigation into the signatures commenced.
  6. PW2, Jasmeer Singh Syan, elder brother to PW1 and co-administrator of their father's estate, confirmed that the disputed property had been bequeathed to PW1 under their father's will. He authorised PW1 to report the fraudulent transfer to the police, recognising the accused, who had previously visited their father to pay rent.
  7. PW3, Anthony Kamau Ng'ang'a, testified that between 2003 and 2008, he worked as a manager at Abantu for Development, directed by Dr. Wanjiru Kihoro, the appellant's wife. In 2009, he was summoned to Police Headquarters regarding the disputed property. He explained that Dr. Kihoro had asked him to find a rental house, leading to a tenancy agreement with the landlord, which included an option to purchase. Later, the appellant presented him with a memorandum of sale and a conveyance, which PW3 signed without hesitation, trusting the appellant as a lawyer. He admitted he neither witnessed the landlord nor Dr. Kihoro sign the documents.
  8. PW4, Daniel Muteshi, a retired police officer formerly attached to DCI headquarters, took over the investigation after the original investigator, CPL Ngiro Joseph, was transferred.
  9. PW5, Chief Inspector Susan Wambugu, testified on behalf of two former forensic document examiners. She explained that her office received questioned documents, including a conveyance, tenancy agreements, and cheques, to compare signatures with known samples from Surinder Pal Singh Syan. The analysis by Chief Inspector Antipas Nyanjwa determined that the questioned signatures were forgeries and the report was produced as a prosecution exhibit. Additionally, Chief Inspector Jacob Oduor's analysis of signatures allegedly belonging to Wanyiri Kihoro, the appellant's advocate, found that the questioned signatures were also forgeries, as they differed from the specimen provided. The report dated 26/3/2012 was also produced as an exhibit.
  10. PW6, Inspector John Mbithi Kithome, testified that the matter was reported to the DCI headquarters by Surender Pal Singh. Singh claimed that land in Kilimani, jointly owned by his late father, Ranjit Singh Syan, and Shantilal Trivedi, had been fraudulently transferred. The land had been leased to Dr. Wanjiru Kihoro, now deceased, who had failed to pay rent, leading to an ongoing civil suit (CMCC No. 1468 of 2008). In the suit, it was alleged that the property had been sold to Dr. Kihoro, which the complainant denied, asserting the signatures on the sale documents were forged.
  11. PW6 opened an inquiry, forwarded the documents for forensic analysis, and interviewed Anthony Ng'ang'a, who admitted to signing the documents based on trust in the appellant. Various documents, including wills, tenancy agreements, and sale agreements, were produced as exhibits to support the inquiry into the alleged forgery and fraudulent transfer.
  12. In his defence, the appellant an advocate of the High Court of Kenya, narrated that his late wife, Dr. Wanjiru Kihoro, entered into a tenancy agreement for the subject property with the complainant's father in April 2001, which was subsequently negotiated for purchase for £60,000 payable to the co-



- owners, including the complainant's father and Shantilal Trivedi. He asserted that he was not involved in the preparation of the documents and maintained that there were no complaints regarding the documents or payments raised by Inspector Kithome.
13. Following his wife's fatal accident, he struggled to complete the payment but continued paying rent to the complainant in 2004 and 2005. He fell into arrears in 2008, leading to the ongoing civil suit. He claimed that the reports prepared by handwriting experts were not presented by their authors and argued that the burden of proof lay with the complainant to show that the cheques were unpaid. The appellant contended he learned of the memorandum of agreement only after the civil case commenced and claimed ignorance of the sale while residing in London. He noted that Mr. Trivedi's absence from testimony left his signature unchallenged.
  14. In the submissions, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He argued the ingredients of the offences he was charged with were not proven beyond reasonable doubt. In addition, the prosecution's evidence particularly did not prove that indeed the handwriting experts did not conclusively prove that the documents in issue were forgeries.
  15. In counts I and II, the appellant were charged with the offence of forgery. The offence of forgery is created and declared by section 349 of the [Penal Code](#) in the following terms –

Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony and he is liable unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.
  16. Forgery is defined in section 345, as “the making of a false document with intent to defraud or deceive.” Section 347 deals with making of a document while section 348 defines intent to defraud. The prosecution was required to prove beyond reasonable doubt that the appellants forged the memorandum of agreement of sale of land number LR 1/205 dated June 5, 2003 and a conveyance of land number LR/205, that it was false and that it was intended to defraud.
  17. It was the prosecution's evidence that the disputed conveyance dated January 21, 2003 which ostensibly transferred the property to the appellant's wife, Dr. Wanjiru Kihoro, contained a signature attributed to the late Ranjit Singh Syan. The complainant, PW1, asserted that this signature was forged. Messrs I. Kapila Advocates, who are alleged to have prepared the conveyance, explicitly denied having drafted the document, raising questions regarding its authenticity. (PW3) provided evidence indicating that he signed the memorandum of sale and conveyance without witnessing the signatures of either the landlord or Dr. Kihoro. The analysis conducted by forensic experts, as represented by PW5, Chief Inspector Susan Wambugu, confirmed that the questioned signatures on the conveyance and related documents did not match the known signature of Ranjit Singh Syan. It was only when PW1 made inquiries into the appellant's conduct concerning unpaid rent, which led him to discover the purported fraudulent transfer.
  18. In addition, the ongoing civil proceedings (CMCC No. 1468 of 2008) wherein the appellant claimed ownership of the property, underscores the appellant's involvement in the transactions under scrutiny. Collectively, these evidential components establish a substantial link between the appellant and the alleged offence of forgery, indicating intentional participation in the fraudulent transfer of property.
  19. This implicated the appellant in the preparation and submission of the allegedly forged documents passing them as genuine. The conviction on counts I and III was therefore safe and is affirmed.



20. Counts II and IV, the appellant was charged under Section 357(a) of the *Penal Code*. Section 357(a) provides:

“ 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;”

21. The elements of the offence require that there is proof that the accused person(s) made, signed, or executed the document in issue in the name of or on account of another person. As already noted, the evidence of the act was availed by the prosecution.

22. In *Dennis Binyenya v Republic* [2018] eKLR Ngenye, J (as she then was) was satisfied that the offence under Section 357(a) had been proved in a case where the appellant had presented a KCSE certificate that had been forged. The learned Judge set out the ingredients of the offence as follows:

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“27. From the definition, 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.

She then explained her reasoning:

“28. It was clear that the Appellant was a candidate during the 2003 KCSE examinations and he was therefore not authorized or was in a position to issue his own certificate. From the particulars of the offence [it] was not disclosed where the certificate was made and with whom the Appellant had produced the certificate. But it is doubtless that the certificate was received from the Appellant and submitted for purposes of his recruitment to join the disciplined forces. The same was thereafter forwarded to the Kenya National Examinations Council for verification. At the Council, the document was found to differ from the information produced by the Council leading to the conclusion that the grades in the individual subjects as well as the mean grade were altered. Undoubtedly then, the certificate held false information regarding the grades attained by the Appellant as can be clearly seen from comparing them with the grades apparent in exhibit 3. This alteration of the results meant that the certificate was not a genuine document. This leads to the inference that the Appellant he was either involved in the alterations or he procured the making of the alterations.



23. In the present case, the memorandum of agreement for the sale of land and the conveyance of land appeared like they were made with the authority of the owners of the land which was disputed. The evidence was therefore adequate to prove the ingredients of the offences in counts II and IV. The conviction is affirmed.
24. On sentence, the appellant was sentenced to pay a fine of KShs. 100,000 in default to serve 12 months imprisonment on each count. In sentencing, the trial court considered the appellant's mitigation and pre-sentence report. The trial court imposed a legal sentence and I see no reason to interfere.
25. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant present

Maroro for the Respondent

Achode Court Assistant.

