



**Rutto & another v Republic (Criminal Appeal E025 & E027 of 2023
(Consolidated)) [2024] KEHC 11227 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E025 & E027 OF 2023 (CONSOLIDATED)**

**AC MRIMA, J
SEPTEMBER 27, 2024**

BETWEEN

SIMON CHERUITOT RUTTO 1ST APPELLANT

SHARON CHEPKOECH BETT 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the judgment, conviction and sentence of Hon. M. Kesse (PM) in Kitale Chief Magistrate's Court Criminal Case No. 420 of 2019 delivered on 12 th February 2020)

JUDGMENT

Introduction:

1. This judgment is in respect two appeals. They are Criminal Appeal No. E025 of 2023 and No. E027 of 2023.
2. The appeals were consolidated by consent of the parties and the attendant Order of this Court made on 21st July 2023.

Background:

4. Simon Cheruiyot Rutto and Sharon Chepkoech Bett, the 1st and 2nd Appellants herein respectively, were charged with various charges. In Count I, they were both charged with the offence of Conspiracy to defraud contrary to Section 317 of the Penal Code.
5. The particulars of the offence were that on the 19th day of June 2017 at Suwerwa Location in Trans-Nzoia East within Trans-Nzoia County, the two jointly conspired with intent to defraud by writing a letter to Kenya Police Service Head Quarters claiming that Sharon Chepkoech Bett was the next of kin



- for the late APC Francis Achukwa Emase and Sharon Chepkoech Bett fraudulently received Kshs. 2.2 million as next of kin from Pioneer Assurance Limited.
6. In Count II, the 1st Appellant was charged with the offence of Making a false document without authority contrary to Section 357(a) of the Penal Code.
 7. The particulars were that Simon Cheruiyot Rutto, on the 19th day of June 2017 at Suwerwa Location, Trans-Nzoia East Sub County within Trans-Nzoia County, with intent to defraud, without lawful authority and jurisdiction made a letter of next of kin to Kenya Police Service Head Quarters, purporting that you received authority from next of kin and parents of the late police officer Francis Achukwa Emase to indicate one Sharon Chepkoech Bett as the next of kin.
 8. In Count III, the 2nd Appellant faced the charge of Uttering a false document with intent to defraud contrary to Section 357(b) of the Penal Code.
 9. The particulars were that Sharon Chepkoech Bett on the 21st June 2017 at Deputy Director General of Administration Police Office Jogoo House Nairobi, with intent to deceive or defraud knowingly uttered a letter purporting Sharon Chepkoech Bett to be the next of kin for the late Francis Achukwa Emase. A letter which had been made by Simon Cheruiyot Ruto Chief of Suwerwa Location without jurisdiction and lawful authority.
 10. In Count IV, the 1st Appellant faced the charge of Making a document without authority contrary to Section 357(a) of the Penal Code.
 11. The particulars were that Simon Cheruiyot Rutto on the 25th July 2017 at Suwerwa location Trans Nzoia East County, Trans Nzoia County, with intent to defraud, without lawful authority and jurisdiction, made a letter of next of kin to Deputy County Commissioner Trans-Nzoia East that you had received authority from the parents of the late APC Francis Achukwa Emase to indicate Sharon Chepkoech Bett as the next of kin.
 12. In Count V, the 2nd Appellant faced the offence of Uttering documents with the intent to defraud/ deceive contrary to Section 357(b) of the Penal Code.
 13. The particulars were that Sharon Chepkoech Bett on 25th July 2017 at Deputy Commissioner Trans-Nzoia County, with intent to deceive and defraud knowingly uttered a letter purporting her to be the next of kin for the late Francis Achukwa Emase a letter which had been made by Simon Cheruiyot Rutto without lawful authority of jurisdiction.
 14. In Count VI, the 2nd Appellant was charged with Stealing contrary to Section 275 of the Penal Code.
 15. The particulars were that Sharon Chepkoech Bett on the 30th August 2017 at Deputy County Commissioner Trans-Nzoia East within Trans-Nzoia County stole Kshs. 51,444/- the property of the late Francis Achukwa Emase purporting to be the next of kin.
 16. At the trial Court, both the accused pleaded not guilty. A trial was conducted.
 17. Margaret Ajene Emase, the mother to Francis Achukwa Emase (hereinafter referred to as ‘the deceased’) testified as PW1. Eunice Arukudi Emase the deceased’s sister testified as PW2. Dr. William Sang, a Senior Chief testified as PW3. Samson Emase, the deceased’s brother testified as PW4. No. 237576 Police Inspector James Kudo a Legal Officer attached to Human Resource Directorate at Police Head Quarters Jogoo House testified as PW5. Festus Kilingosi testified as PW6. PC. No. 93648 Daniel Polo attached to DCI Eldoret was the Investigation Officer. He testified as PW7.



18. At the close of the prosecution's case, the trial Court was of the finding that a prima facie case had been established against the Appellants. Accordingly, they were placed on their defence.
19. The Appellants were the sole defence witnesses. They testified as DW1 and DW2 respectively.
20. Upon analysing the totality of the evidence, the trial Court found that the prosecution had discharged its burden of proof against the Appellants. They were found guilty of the offences charged and were convicted under Section 215 of the CPC.
21. The Appellants were sentenced to a cumulative jail term of 8 years each.

The Appeal:

22. The Appellants were dissatisfied with their convictions and sentences.
23. The 1st Appellant lodged his Petition of Appeal dated 22nd March 2023 citing the following Grounds of Appeal: -
 1. That the learned trial magistrate erred in law and in fact in conviction and sentencing the appellant to serve a jail term of 8 years on two counts of making a document without authority contrary to section 357(a) of the Penal Code and one other count of Conspiracy to defraud contrary to section 317 of the Penal Code without any proof.
 2. That the learned trial magistrate erred in law and fact by convicting the appellant on the offence of conspiracy to defraud contrary to section 317 of the penal code without any proof.
 3. That the learned trial magistrate erred in law and fact by convicting the appellant on count II and IV of making a document without authority contrary to section 357(a) of the Penal Code, by ignoring the appellant's evidence that the 1st Accused and her late husband were the residents of his location for 7 years and it is on that basis that he made the documents in issue.
 4. That the learned trial magistrate erred in law and fact in sentencing the Appellant to serve a jail term of eight years by ignoring the Appellant's evidence that the documents in issue were made by the Appellant in the course of his duty as a public officer.
 5. That the learned trial magistrate erred in law and in fact by making a finding that the area chief of Chepkoilel Location was the only one with jurisdiction and authority to make the documents in issue when the 1st accused to whom the documents were made has never been a resident of Chepkoilel location.
 6. That the learned trial magistrate erred in law and fact in imposing a sentence that was manifestly excessive in Count 1 on the offence of conspiracy to defraud contrary to section 317 of the Penal Code.
24. The 2nd Appellant lodged the Petition of Appeal dated 1st April 2023. She sought to set aside the trial Court's judgment on the following grounds: -
 1. That the learned trial magistrate erred in law and in fact when she held that the offence of conspiracy to defraud had been proved.
 2. That the learned trial magistrate erred in law and in fact when she held that the offence of uttering a false document with intent to defraud had been proved.
 3. That the learned trial magistrate erred in law and in fact when she held that the offence of stealing contrary to section 275 of the penal code had been proved.



4. That the learned trial magistrate erred in law and in fact when she held that the offence of uttering a document with intent to defraud in accordance with Count V of the charge sheet had been proved.
5. That the learned trial magistrate erred in law and in fact when she ignored the defence evidence both oral and documentary and which was clear and that the above offences had not been committed.
6. That the learned trial magistrate was biased and acted contrary to the law.
7. That the learned trial magistrate erred in law and in fact when she held that the prosecution had proved its case beyond reasonable doubt.
8. That the Judgment of the Court was against the evidence on record.

The 1st Appellant's submissions:

25. The 1st Appellant urged his case further through written submissions dated 11th September 2023.
26. He submitted that there was no proof of conspiracy between him and the 2nd Appellant to defraud since the element of an agreement and the intention to defraud were not proved.
27. It was his case that the trial Court's analysis of the charge of conspiracy was erroneous. He argued that learned trial Magistrate misdirected herself when she found that they conspired to defraud the family of the deceased's benefits whereas the complainant in the charge sheet was Eunise Emase and not the 'family of the deceased'.
28. It was submitted that, based on testimonies of PW1, PW2, PW5 and PW7, it was not clear who was the next of kin of the late Francis Achukwa Emase and no documentary evidence in the form of records was availed from Pioneer Assurance Limited to prove that Eunice Emase was to be the next of kin of the late Francis Achukwa Emase.
29. The 1st Appellant submitted that there was no legitimate complainant allegedly defrauded by the Appellant and Eunice Emase could not be the complainant to prosecute a case against the estate of the deceased without a valid grant of letters of administration.
30. As regards the question of authority to draft letters referred to in Counts II and IV of the Charge Sheet, the 1st Appellant submitted that the finding by the trial Magistrate that he lacked authority was erroneous since at the material time, he was the Chief of Suwerwa Location.
31. He submitted that the contents of the letters dated 19th June 2017 and 25th July 2017 which introduced the 2nd Appellant as the next of kin of the deceased could not be said to be false since it was supported by the testimony of PW7.
32. It was his case that since both the deceased and the 2nd Appellant were people well known to him, he had no reason to doubt or suspect the intentions of the 2nd Appellant at the time.
33. In conclusion, the 1st Appellant submitted that the sentence of 4 years was excessive in so far as Count 1 was concerned since Section 317 of the Penal Code imposes a punishment of three years.



The 2nd Appellant's submissions:

34. In its written submissions dated 10th October 2023, the 2nd Appellant stated that the offence of conspiracy to defraud under Section 317 of the Penal Code had not been proved since the evidence of the 1st Appellant was to the effect that he knew her as the wife of the deceased.
35. It was her submission that no evidence of fraud had been proved by the prosecution. The Court of Appeal decision in Criminal Appeal No.76 of 1983 Joseph Mukuha Kimani -vs- Republic was relied upon where the ingredients of the offence of uttering a false document were outlined.
36. The 2nd Appellant further argued that the offence of stealing under Section 275 of the Penal code was not proved. It was her case that they (Appellants) were able to explain in their defence what transpired and the process leading to the payments of the money to her, a process that rebutted the incidence of stealing or fraud.

The Respondent's case:

37. The State challenged the appeal through written submissions dated 3rd November 2023. It was its case that the evidence adduced at the trial Court established that the deceased was a resident of Chepkoilel as opposed to Suwerwa Location.
38. It was its evidence that the 1st Appellant was not a Chief of Chepkoilel Location where the deceased was resident and thus lacked authority to make documents for the deceased.
39. The Respondent submitted that the deceased was not his resident and neither was he residing in his jurisdiction and thus had no lawful authority to make documents for the deceased.
40. It was its case, therefore, based on the definition of the word conspiracy in Blacks' Law Dictionary and observed by the Court to Appeal in Gichangi -vs- Republic (1993) KLR 143, that the Appellants conspired to defraud the deceased's family.
41. The Respondent submitted further that the Appellants' evidence that the deceased was a resident of his location for period of 7 years was not corroborated by any witness from Suwerwa.
42. In the end, the Respondent urged this Court not to interfere with the sentence since the trial Court took into consideration all the relevant factors including mitigation. It urged that the appeal be wholly dismissed.

Analysis:

43. This being a first appeal, this court is duty bound to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent conclusions and findings (See Okono vs. Republic [1972] EA 74).
44. In Criminal Appeal No. 280 of 2004 Odhiambo -vs- Republic (2005) 1 KLR, the Court of Appeal spoke to the role of this Court as a first appellate Court. It observed as follows: -

On a first appeal, the Court is mandated to look at the evidence adduced before the trial afresh, re-evaluate and re-assess it and reach its own independent conclusion.
45. As an important consideration, this Court ought to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court. It therefore must give due allowance in that respect. (See Ajode -vs- Republic [2004] KLR 81).



46. With the foregoing guidance, this Court will embark on the journey of re-looking and re-analysing the evidence.

The trial:

47. Margaret Ajene Emase, the deceased's mother, testified as PW1. It was her evidence that the 2nd Appellant was only a friend to her son whom she did not know. She stated that her son wanted to purchase land at a place called Cherangany and upon buying it, the 2nd Appellant's family planned to kill him.

48. She stated that the deceased then informed her that he wanted to go to Nairobi to seek a transfer since the 2nd Appellant planned with other officers to kill him and take his insurance money and benefits.

49. It was her evidence that her son died on 28th March 2017 and at that time, he had no wife or children. She testified that even during his funeral, no one came forward to claim to be his wife or child.

50. She stated that her son's benefits were taken from her despite her and her daughter Eunice Emase being the rightful next of kin.

51. It was her evidence that when she realized that her son's money had been taken, she went to Nairobi to follow up where she was informed by one Mr. Madenge that all the insurance benefits had been paid to the 2nd Appellant.

52. It was her case that she could not explain how the 2nd Appellant was paid yet she had all the documents. He claimed that she did not know the Chief who signed the documents. She stated that her Advocate wrote to the Insurance company to stop further payment. She referred to the letter dated 5th April 2018.

53. It was her evidence that her daughter had to take a loan of Kshs. 100,000/- to cater for funeral expenses.

54. During cross-examination, it was her evidence that when she went to Lodwar upon her son's death, she was not recognized as the deceased's parent. She stated that her son's boss handed over documents to the 2nd Appellant.

55. It was her evidence further that the 2nd Appellant was present at the funeral and that she did not have a child. She stated that she had never seen the letter dated 18th April 2017 which the 2nd Appellant wrote to the Deputy Inspector General Police requesting benefits to be paid to the deceased's sister Eunice Emase.

56. It was her evidence that she did not know why the Burial Permit was issued to the 2nd Appellant and why the 2nd Appellant was included as wife of the deceased in the funeral programme.

57. PW1 further testified that she did not know the Chief of Suwerwa Location. She stated that it is the said Chief that wrote the letter dated 19th June 2019 to the Kenya Police Service confirming that the 2nd Appellant was the deceased's wife.

58. It was her evidence that she and her daughter are the next of kin of the deceased at Harambee Sacco but his money, including insurance, Sacco and money at Cooperative Bank had been paid to the 2nd Appellant.

59. The deceased's sister, Eunice Arakudi Emase testified as PW2. It was her evidence that his brother always informed him that she was his next-of-kin.



60. It was his evidence that upon learning of his death, she started the burial arrangements, went to Jogoo House in Nairobi to collect Kshs. 150,000/- but was informed that she would not be paid unless the 2nd Appellant was seen.
61. It was her evidence that on following up the issue, they found that the 2nd Appellant was paid Kshs. 266,000, Kshs. 2,464,080/- and around Kshs. 36,000/- from Harambee Sacco, Pioneer Insurance and Cooperative Bank respectively.
62. She testified that the Pension money that was to be paid was injunctioned after her mother sought Court's intervention, but still found that Kshs. 558,000/- had been paid to the 2nd Appellant on 16th January 2018.
63. On cross-examination, it was her evidence that she did not know who the 2nd Appellant was. She stated that she did not know that the 2nd Appellant lived in Suwerwa.
64. It was her further evidence that, during the funeral, the Master of Ceremony asked from amongst the mourners about the deceased's wife and further asked if any was present to stand up, but the 2nd Appellant failed to do so.
65. PW3 was Senior Chief Dr. William Sang. It was his evidence that he resided in Chepkatel within Uasin-Gishu County. He testified that on 19th April 2017, the 2nd Appellant went to his office at Chepkoilel and requested for Letters to claim monies for burial of the deceased. She claimed to be the deceased's wife.
66. It was his case that he had never met her before, but advised her to come along with the deceased's parents. He stated that the 2nd Appellant came the second day without the parents, but PW3 insisted that he would only issue the letter in presence of the deceased's parents.
67. It was his evidence that he summoned deceased's parents and asked them to come with the entire family. He stated that 6 of them came and the 2nd Appellant was present.
68. PW3 stated that the entire family denied that the 2nd Appellant was the deceased's wife. He testified that the 2nd Appellant then gave him the telephone number of the County Commandant Lodwar. PW3 called him and the said Commandant informed him that the 2nd Appellant was the deceased's wife.
69. PW3, however, stated that upon making an inquiry, the contact that the 2nd Appellant gave him did not belong to the County Commandant in Lodwar.
70. It was his further evidence that he did a letter of introduction to enable PW2 collect monies for funeral expense and later in the month of August he did another letter for the deceased's mother to get the benefits.
71. He produced the letter dated 24th August 2017 in evidence.
72. It was PW3's further testimony that he later learnt that the deceased's benefits were released to the 2nd Appellant. PW3 confirmed that he was the Area Chief for Chepkoilel Location. He produced his Job card in support.
73. On cross-examination, it was his evidence that he did not know the 2nd Appellant as the wife of the deceased. He stated the deceased was buried in his location.
74. PW3 stated that as an Administration Officer, he was duty-called to exercise due diligence in all matters he handled. He stated that once a death is reported or a Death Certificate produced to him, he must



call all the interested parties, family, wife and children and agree on way forward. It was his case that it is the Chief who usually issues a Burial Permit.

75. Samson Emase, the deceased's brother testified as PW4. It was his evidence that as a family they did not know the 2nd Appellant, that there was no Marriage Certificate and that he had no knowledge on whether the deceased resided with the 2nd Appellant.
76. On cross-examination, it was his evidence that he had seen the 2nd Appellant with the deceased, but his brother only informed him that she was a friend.
77. No. 237567 Police Inspector James Kudo testified as PW4. It was his evidence that he was a Legal Officer attached to the Human Resource Directorate at the Police Headquarters Jogoo House in Nairobi.
78. In regard to the case, he produced the Chief's letter dated 11th October 2017 which was presented to him by the 2nd Appellant as an exhibit. He stated that there was another letter, [which was also produced in evidence] which the 2nd Appellant wrote accepting liability for over any payment and receipt of payment made to her in respect of the deceased's monetary entitlements.
79. Regarding the letter for request for funds by the 2nd Appellant, PW4 stated that no Certificate of Marriage was annexed thereto. It was his further evidence that it was wrong for the 1st Appellant to have written the letter. He stated further that from their records, the deceased was instead a resident of Moiben.
80. No. 93648 PC Daniel Polo testified as PW7. He was the Investigating Officer. It was his evidence that when PW1 reported the death of her son and the eventual embezzlement of funds which were to be paid to her, he initiated investigations by travelling to Eldoret where the deceased was buried and met the Area Chief, PW3, who confirmed that the deceased had been his resident.
81. He stated that he confirmed that PW3 did not write any letter to process the pension. He then proceeded to Jogoo House in Nairobi where he learnt that the 2nd Appellant had presented a letter by the Chief of Suwerwa Location where the 2nd Appellant was born. It was his position that pension officers mostly trust Chiefs and it is on that basis that the pension was processed in the 2nd Appellant's favour.
82. It was further his evidence that he established that the deceased had a relationship with the 2nd Appellant, but that they were not married. He also stated that the 2nd Appellant processed the Death Certificate without the knowledge of the family, but with the assistance of the 1st Appellant herein.
83. At the close of the prosecution's case, it was on the basis of the foregoing evidence that the Appellants were placed on their defences.
84. The 1st Appellant testified as DW2. He stated that he was a resident of Suwerwa Location where he served as the Area Chief and that he retired in May 2022. It was his evidence that the 2nd Appellant is a resident of Suwerwa Location.
85. He testified further that the 2nd Appellant went to his office in the year 2018 and that he assisted her in his line of duty. That, the 2nd Appellant carried the deceased's Death Certificate and the deceased's Eulogy. He also stated that he knew the deceased very well and that he used to live with the 2nd Appellant. It was his evidence that based on the facts as they were known to him, he wrote a letter to the Deputy County Commissioner on 25th July 2017.



86. It was his case that he did not have any interest in helping the 2nd appellant and that he needed no authority from anyone. He stated that he did not know the parents of the deceased. He stated that the parents of the deceased were never there.
87. In her defence, the 2nd Appellant stated that she married the deceased in the year 2010 and that she was his wife and were blessed with a son, Samson Acheke. She produced his Birth Certificate as DExh.1.
88. It was her evidence that when the deceased died, the County Commandant Lodwar called her as his wife to inform him. She then travelled to Lodwar where she was given the deceased's ATM Card, NHIF Card and the Identification Card.
89. She stated she was involved in the funeral arrangements. She produced the Funeral Programme and the Burial Permit issued in her name as exhibits. She also produced a letter from the Deputy Inspector General and her letter to the said officer regarding the payment of monies to be credited to the deceased's sister's account in evidence.
90. On cross-examination she stated that she was the deceased's wife not his girlfriend. It was her testimony that they had been living together as husband and wife but had only met his father and mother.
91. It was her further evidence that their respective parents had not yet negotiated dowry. She admitted that she did not have any witnesses in Court to attest to the fact that she indeed was the deceased's wife.
92. The 2nd Appellant stated that she had the right to enjoy the deceased's benefits. She conceded that the Chief's letter stated that the deceased's family granted her permission to receive monies on behalf of the deceased's family.
93. At the close of the defences, the trial Court rendered its judgment and found the Appellants guilty of all charges as charged. They were subsequently sentenced.

Any offences committed?

94. With the foregoing evidence, this Court will now look at whether the offences the Appellants were convicted of were truly committed.
95. The starting point is an appreciation of the nature of this matter. From the evidence, the 2nd Appellant alluded to having been married to the deceased. She stated that their union yielded a son. It was her evidence that she lived with the deceased as a couple in Lodwar and that the Commandant knew as much such that when the deceased died, she was called and handed over some items and documents.
96. The 1st Appellant was a Chief. He knew that the 2nd Appellant lived with the deceased as a couple. He also testified that after the death of the deceased, the 2nd Appellant sought assistance from his office and carried with her the deceased's Death Certificate and the deceased's Eulogy where she was named as the wife.
97. On the very issue, as to whether the 2nd Appellant were married or lived together, PW1 testified that on learning of her son's death, she travelled to Lodwar and met the Commandant. However, the Commandant refused to recognize her in any way and instead handed over the deceased's documents and items to the 2nd Appellant.
98. PW1 also affirmed that the 2nd Appellant attended the funeral and that the deceased's Burial Permit was issued to the 2nd Appellant. She also confirmed that the 2nd Appellant was included as a wife of the deceased in the funeral programme.



99. One of the deceased's brother who testified as PW4 also confirmed having seen the deceased and the 2nd Appellant together, but the deceased told him that the 2nd Appellant was only a girlfriend and not a wife.
100. Given the nature of the offences preferred against the Appellants, one may pose and ask whether such offences would stand if it were true that the 2nd Appellant and the deceased were either married or lived together and had a son.
101. That was indeed the central question which the investigating officer ought to have set out to answer from the word go.
102. But, how did the investigator handle the matter?
103. This Court has carefully perused the record and reviewed the evidence. It is apparent that nowhere did the investigator attempt to answer the said question. No witnesses were interrogated over the issue including the Commandant in Lodwar who expressly recognized the 2nd Appellant as the wife of the deceased. Even the fact that the 2nd Appellant's name appeared in the Eulogy as a wife of the deceased did not raise the investigator's antennae.
104. From the record, there is prima-facie evidence of a relationship between the deceased and the 2nd Appellant being either married or lived together with the possibility of having yielded a child. That evidence, therefore, qualified the 2nd Appellant as an interested party capable of pursuing any benefits resulting from the death of the deceased.
105. The only thing which would have stood on the way of the 2nd Appellant from claiming any benefits arising from the said death would have been if there was evidence that the deceased had not named the 2nd Appellant as his next-of-kin or that there was no relationship at all between the two and that the issue of the child was a fraud. But, as stated, there was no such evidence.
106. Therefore, since the investigations failed to resolve the very cardinal issue, then the resultant lacuna could only have been resolved in favour of the Appellants.
107. Having said as much, a sight at the charges in light of the evidence affirms the foregoing. None of the charges would possibly stand if investigations were carried out and revealed that the deceased and the 2nd Appellant were married or lived together and had a child.
108. In this matter, the complaint by PW1 was mainly that she was disinherited by the 2nd Appellant with the aid of the 1st Appellant.
109. In view of the unique circumstances herein, there were crucial issues which ought to have first been resolved before any conclusion was arrived at on the complaint. The resolution thereof could only have been undertaken either by a Succession Court or through criminal forensic evidence confirming that indeed documents were falsified and eventually uttered. In fact, this was a matter in which the investigator ought to have advised PW1 to lodge a cause before a Succession Court. Alternatively, the investigator ought to have proved that documents were falsified and uttered.
110. Further, there was no evidence connoting that the 1st Appellant did anything outside his jurisdiction as a Chief given that all the documents he prepared had sound basis. However, the investigator seemed not to have been interested in pursuing that aspect.
111. The prosecution having, therefore, failed to disprove the fact that the deceased and the 2nd Appellant were married or lived together and had a child and having further failed to prove that documents were



falsified and uttered; then all the convictions cannot stand. Equally, none of the sentences have any legal leg to stand on.

112. As such, the appeals are merited.

Disposition:

113. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 thereby mostly being away from the station. Apologies galore.

114. In the premises the following final orders hereby issue: -

- a. The Criminal Appeal No. E025 of 2023 and the Criminal Appeal No. E027 of 2023 are hereby allowed. All the convictions against the Appellants in Kitale Chief Magistrate's Court Criminal Case No. 420 of 2019 are hereby quashed and the respective sentences set-aside.
- b. The Appellants are hereby set at liberty unless otherwise lawfully held.
- c. File marked as closed.

115. It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 27TH DAY OF SEPTEMBER, 2024.

A. C. MRIMA

JUDGE

Judgment delivered virtually and in the presence of: -

Mr. Gemenet, Learned Counsel for the Appellants.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

