



REPUBLIC OF KENYA



KENYA LAW
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**Magiri v Republic (Criminal Appeal E171 of 2021)
[2022] KEHC 11455 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E171 OF 2021**

TW CHERERE, J

MAY 26, 2022

BETWEEN

ERICK MUTHOMI MAGIRI APPELLANT

AND

REPUBLIC RESPONDENT

*((Being an appeal against sentence in Meru Criminal Case No.
918 of 2016 sentence by Hon. E. MBICHA PM on 21st May 2019))*

JUDGMENT

1. Erick Muthomi Magiri (appellant) was charged with 7 counts as follows:

Count I: Making a false document contrary to section 347 (a) as read with section 349 of the [Penal Code](#) the particulars of which alleged that the on unknown date at unknown place within the Republic of Kenya jointly with others not before court made a false document namely a Bachelor of Medicine and Bachelor of Surgery degree certificate purporting it to be a genuine certificate issued by the University of Nairobi.

Count II: Making a false document contrary to section 347 (a) as read with section 349 of the [Penal Code](#) the particulars of which alleged that the on unknown date at unknown place within the Republic of Kenya jointly with others not before court made a false document namely a University of Nairobi Students card purporting it to be a genuine students card issued by the University of Nairobi.

Count III: Making a false document contrary to section 347 (a) as read with section 349 of the [Penal Code](#) the particulars of which alleged that the on unknown date at unknown place within the Republic of Kenya jointly with others not before court made a false document namely KCSE certificate from Starehe Boys Center index number 400004/01 purporting it to be a genuine KCSE certificate issued by the Kenya National Examination Council.



Count IV: Making a false document contrary to section 347 (a) as read with section 349 of the *Penal Code* the particulars of which alleged that on unknown date at unknown place within the Republic of Kenya jointly with others not before court made a false document namely examination for Kenya Certificate of Secondary Education result slip index number 400004/01 from Starehe Boys Center purporting it to be a genuine KCSE result slip issued by the Kenya National Examination Council.

Count V: Uttering a false document contrary to section 353 of the *Penal Code* the particulars of which alleged that on March 23, 2016 at Meru Teaching and Referral Hospital in Imenti North Sub-County within Meru County, knowing and fraudulently uttered a false document namely Bachelor of Medicine and Bachelor of Surgery degree certificate to Dr Guchuyia M'Riara the chief executive officer Meru Teaching and Referral Hospital purporting it to be a genuine certificate issued by the University of Nairobi.

Count VI: Uttering a false document contrary to section 353 of the *Penal Code* the particulars of which alleged that on March 23, 2016 at Meru Teaching and Referral Hospital in Imenti North Sub-County within Meru County, knowing and fraudulently uttered a false document namely KCSE certificate from Starehe Boys Center index number 400004/01 to Dr Guchuyia M'Riara the chief executive officer Meru Teaching and Referral Hospital purporting it to be a genuine certificate issued by the Kenya National Examination Council.

Count VII: Personation contrary to section 382 of the *Penal Code* the particulars of which alleged that on March 23, 2016 at Meru Teaching and Referral Hospital in Imenti North Sub-County within Meru County, with intent to defraud falsely represented himself a doctor.

2. Appellant was tried and convicted on all 7 counts. He was sentenced to 3 years' imprisonment on count 1,2,3,4,5 and 6 and 7 years on count 7, which sentences were to run concurrently.

The Appeal

3. Dissatisfied with the conviction and sentence, the appellant lodged this appeal setting out 6 grounds as set out in the memorandum of appeal filed on November 2, 2021. By his submissions filed on April 14, 2022, appellant abandoned all grounds except ground 4 in which he states that in sentencing him, the learned trial magistrate failed to apply section 333(2) of the *Criminal Procedure Code* which requires that the period spent in custody be considered.

4. Section 333(2) of the *Criminal Procedure Code* which provides: -

Warrant in case of sentence of imprisonment

- (2) Subject to the provisions of section 38 of the *Penal Code* (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

5. Appellant was arrested and charged on May 3, 2016 and on the same date promptly paid cash bail to secure his release. appellant was on bond throughout the trial magistrate acted lawful in not making an order that the sentences commence from the date of appellant's arrest.
6. In the end, I find that this appeal has no merit and it is dismissed.

DELIVERED AT MERU THIS 26TH DAY OF MAY 2022.



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WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Appellant - Present in person

For State - Ms. Mwaniki (PPC)

