



REPUBLIC OF KENYA



**Mithamo v Republic (Criminal Appeal 30 of 2018)  
[2022] KEHC 3147 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 3147 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL 30 OF 2018  
RM MWONGO, J  
JUNE 23, 2022**

**BETWEEN**

**ROSEMARY MICHERE MITHAMO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This an appeal against the judgment of Hon D N. Sure dated  
18th January 2018 in Wanguru SPMCC No 56 of 2017)*

**JUDGMENT**

1. The appellant was charged with three counts for the offences of: obtaining money by false pretenses contrary to section 313 of the Penal Code; personation contrary to section 382 of the Penal Code; and making a false document contrary to section 347(a) of the Penal Code. According to the charge sheet, all these offences were allegedly committed jointly with others not before the court.
2. The particulars all relate to a fraudulent sale transaction to Luka Nyamu Gachara, and Jamleck Muchira Gachara of land Parcel No Mwea/Miuu/13953/3767 for Kshs 540,000/- by false pretenses; whilst falsely presenting herself to be Ciriaka Wanjiru Murage, whilst knowing this to be false; and finally, by making a false document, namely a national identity card issued to Ciriaka Wanjiru Murage.
3. Following a hearing in which eight (8) prosecution witnesses and the accused testified, the appellant was found guilty on all counts, convicted, and sentenced to consecutive sentences as follows:  

Count 1 Two (2) years in jail; Count 2 One (1) year in jail; and Count 3 Two (2) years in jail.
4. Dissatisfied, the appellant appeals seeking that the conviction be quashed and sentence set aside. Her amended grounds of appeal are as follows:



1. That the Hon. Trial Magistrate erred in law and fact by failing to find there were material contradictions and inconsistencies which went to the root of the whole of the prosecution's case.
2. That the Hon. Trial Magistrate erred in law and fact by failing to find that the mode of arrest was greatly unjustified by the evidence.
3. That the Hon. Trial Magistrate erred in law and fact by [not] giving regard to the appellant's defense.
4. That the Hon. Trial Magistrate erred in law and fact by meting out a sentence that was both harsh and excessive in the circumstances underlying.
5. Parties filed written submissions to dispose of the appeal as directed by the court.

### **The Appellant's submissions**

6. The appellant generally contends that to secure a conviction it was incumbent on the prosecution to prove, beyond reasonable doubt, all the elements of the crime of obtaining money by false pretense, personating and making false documents together with a common intention (albeit). This appeal contends that the prosecution failed to prove the elements of identification that the Appellant committed the said offence, that statutory provisions were not followed and finally that the sentence was excessive in the circumstances bearing.
7. The appellant pointed out that PW1 said he was telephoned by his mother – when he was at Morgan – who told him that a woman had some land. Yet that he later said his mother telephoned and told him a woman had land, and he and his brother went to where they were near the road. On the other hand, PW3 alleged that the accused telephoned him while at Itangi with PW1 and PW2 looking for land. Further, that the mother who is PW3 states that she was with her sons when the accused called her whereas PW1 clearly stated that he was alone with his brother.
8. Further, the appellant pointed out that PW1 stated in page 11 line 15-1 ROA as follows: “thus withdrew Ksh.600,000 out of which I gave accused Ksh.540,000”. That PW2 stated in page 15 line 8 that “Nancy had the money and she gave accused”. On the other hand, Nancy herself who is PW3 clearly stated in page 17 line 10-11 that, “we withdrew Ksh.600,000 which I gave to Manegene who gave the accused, we paid Ksh540,000”.
9. She argues that since it was not clear who received the alleged as the witnesses contradict each other as to who received it, their overall evidence cannot convince the court that she was present was present during the said transactions. She asserts that the contradictions are not minor but go to the root of the case and also to the culpability of the appellant. She urges the court to resolve the discrepancy in her favour.
10. The appellant submits that her arrest was not justified by any evidence. Indeed, that the narrative of the various prosecution witnesses is that a large amount of money was stolen from them yet no evidence of recovery has been led to prove that wild allegation.



11. She urges that there was no proof of her possession of any money, and relies on the case of *Joseph Kisilu Mulinge versus Republic* [2014] eKLR where the court stated:

“In order to prove possession, there must be acceptable evidence as to search of the suspect and recovery of the alleged stolen property and any discredited evidence on the same cannot suffice no matter how many witnesses”.

12. She submits that failure to show any evidence of recovery of the alleged stolen cash waters down the whole evidence on charges implicating the Appellant, and is tantamount to hearsay evidence.

13. The appellant also submits that the case against her was not proved by any positive identification, the evidence was not only contradictory but the same could not be relied on because of the many unfilled gaps it left. The prosecution bore the burden of proving the accused person guilty beyond all reasonable doubt through concrete evidence as the perpetrator of the offence (s) therein.

14. On sentence, she submits that the trial court erred by meting out sentence to run consecutively in three offences which occurred albeit in the same transaction. She states that Section 14 of the *Criminal Procedure* provides as follows:

“ 14.1 Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for the offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishment shall run concurrently.

14.2. In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender to trial before a Higher Court.

14.3 Except in cases to which Section 7 [1] applies, nothing in this section shall authorize a subordinate court to pass on any person at one trial, consecutive sentences:

a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court in the exercise of its ordinary jurisdiction, is competent to impose whichever is the less: or

b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.”

15. Her argument is that in her case, the sentences ought to have been concurrent in that the practice is that where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances the courts impose concurrent sentences. On this score she refers to the case of *Sawadi Mukasa s/o Abdula Aliguraisa* [1946] 13, EACA 97, then the Court of Appeal for Eastern Africa is a judgment read by Sir Joseph Sheridan stated

“That is still good practice. As a general principle the practice is that if an accused person commits a series of offences at the same time in an act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different



criminal transaction, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment”.

16. As for the meaning of the phrase “same transaction”, the same was defined in *Republic versus Saidi Nsabuga s/o Juma & Another* [1941] EACA and revisited again in *Nayhan versus Republic* [1965] the court states as follows:

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action purpose or by relation of cause and effect was to constitute one transaction then the offences constituted by these series of acts are committed in the course of the same transaction. The one transaction rule requires that where two or more offences are committed in the course of a single transaction, the sentencing court should consider an order for concurrent instead of consecutive”.

17. She prays that this court will find that the counts complained above occurred in a series of a single transactions, and urges that the court will order the sentences to run concurrently.

### **The Prosecution’s submissions**

18. The prosecution submitted on three prongs, namely: Whether the appellant was convicted on unjustified, contradictory and inconsistent evidence; Whether the trial court ignored the appellant’s defence; and Whether the sentence was both harsh and excessive.
19. On the first prong the prosecution highlighted the evidence of PW1 (Luka Nyamu Gachara), PW2 (Jamleck Muchira Gachara) and PW4 (Stanley Waweru Manegene) The DPP pointed out PW1 and PW2 testified as to how they sought and identified land, entered into negotiations for the purchase with the appellant and one Stanley Murage, and purchased the land after being shown the title by the said Stanley Murage. Exhibits for the purchase transaction were also referred to by the DPP Subsequent to the purchase they went to farm the land only to be told by PW3, the true owner, that the land was not on sale.
20. On the second prong, the appellant argued that the prosecution case was not made up of good evidence, and that the defence case was left intact although not seriously taken into account by the trial magistrate
21. On the third prong the prosecution stated that the offences of obtaining by false pretenses, impersonating and forgery attract maximum sentences of three years, seven years and three years, respectively. Accordingly, the prosecution pointed out that the trial court had in fact been lenient.

### **Analysis and Determination**

22. It is trite that the duty of this court on a first appeal is to re-evaluate all the evidence on record and come to its own conclusions, being mindful that it did not itself see and hear the witnesses itself, nor assess their demeanour as stated in *Okeno v Republic* [1972] EA 32. More recently, in *David Njuguna Wairimu v Republic* [2010] eKLR, the Court of Appeal stated that duty as follows:

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered



the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision.”

23. In reviewing and re-evaluating the evidence, the court must keep its eye on the elements of each of the offences that must be proved by the state using the facts on record. Thus, in cases of multiple counts such as this one, the prosecution is required to prove the offence in respect of each of the counts.
24. The evidence on record is summarized as follows.
25. PW1 Luka Nyamu Gachara testified that on 25<sup>th</sup> March 2016, he was looking for land to buy. He was with his brother Jamleck Muchira Gachara (PW2), when his step mother Nancy Wanjiku (PW3) advised him that she had information that a woman, the accused, had land. He and his brother met the accused, whom he had not known before, and they negotiated a price of Kshs 180,000/- per acre. The accused told them that her husband Stanley Waweru Manegene was the owner.
26. The next day they went to Kerugoya to meet the owner. They met a man who went by the name Stanley Manegene, who the accused told them was her husband. He told them that his wife had been admitted with a child at Karira.
27. On 31/3/2016 they met the accused, this time with her husband at Kerugoya in Ikahu Ngangah’s office. They came to know her name as Ciaraka Wanjiru Murage, PW1 was curious as to why she did not go by the husband’s name, and she told him the husband was a drunk and unco-operative. That he would eat all the money alone.
28. Eventually, they agreed on payments after accused had rejected payment through the bank. The advocate drew the sale agreement after they had provided identity cards, and allotment letter as proof of the title No Mwea/ Miuu/ 13963/3767. The land had been allocated by the County Council to Stanley Waweru Manegene. PW1 withdrew Kshs 600,000/- from his mother’s account as per withdrawal slip (MFI 3) and she carried it. Out of that money they paid Kshs 540,000/- for three acres. They also executed a sale agreement (MFI 4). His mother is the one who gave the money to the accused.
29. After buying the land PW1 went to plant trees on it but was confronted by someone who said the land was not for sale. On calling the accused, he was unable to get her as she switched off her phone. He later reported to the police.
30. PW2 Jamleck Muchira Gachara, testified that he, his brother, PW1 and mother, PW3, were looking for land to buy. His mother was alerted about some land by Ciaraka Wanjiru, the accused. They eventually met the accused who showed them the land. They liked it and agreed to meet in Kerugoya. They paid 540,000/- for 3 acres, after they had been shown the land title by Stanley Manegene the owner. The money was paid in cash to the accused from PW3’s account, who had carried it.
31. In cross examination, PW2 confirmed that they went to a lawyer’s office where an agreement was drawn; the accused and her husband produced ID cards; and the title document was produced by Stanley Manegene.
32. PW3, Nancy Wanjiku Gacara testified that the accused telephoned her while she was with PW1 and PW2 looking for land. She did not know how the accused got her number, and had not known her name before they met to execute the sale agreement.
33. The accused showed them the land, which they liked, and told them it belonged to her husband. They were shown a title for the land by Stanley Manegene, and agreed to pay the money in Kerugoya before an advocate. The money came from her account in Co-operative Bank where she withdrew 600,000/-.



- The accused and her husband gave their IDs to the lawyer who drew the agreement. She paid Kshs 540,000/- to Stanley Manegene who gave the money to the accused.
34. In cross examination, she said the accused called her while she was in Itangi with PW1 and PW2, and told her she had a plot that belonged to her husband; that they met at Kerugogoya with Manegene, that the agreement was drawn by the advocate and executed. That she carried part of the money, Kshs 300,000/-, whilst PW1 carried the other 300,000/-.
  35. PW4 Stanley Waweru Manegene, is the Assistant Chief of Mahigaini sub-location. He testified that he is the owner of LR No 3767 South Ngariama, which he acquired in 2007 through the County Council. He produced the receipts for the purchase dated 2/4/2007, and the application fee receipt. He was never given a title because they were not available for South Ngariama, but he retained possession of the parcel of land,
  36. PW4 testified that his wife is Esther Wanjiru Wawera. They were not selling the land. He and his wife were summoned by CID officers, and confirmed that they had not instructed anyone to sell the land, and that he has no relative who bears his name. He confirmed that the County Council ballot papers have his ID number, land parcel number and stamp of the County Council. In cross examination, he said the CID directed him to check the position of his land, and he did a search. He found the land was still in his name. his land was vacant and remained so.
  37. PW5, Stella Mwai, is the Registrar of Persons Mwea East, where she has worked for five years. She produced two ID Cards. The first was ID No 14077934 S. No. 209030921 under the name Ciaraka Wanjiru Murage. Under the Registrar's data base, the ID belongs to Ciaraka Wanjiru Murage, born in 1948 in Kirinyaga Central. In the card given to her, however, the date of birth is 1968, which differs from the Registrar's records; and the bearer is indicated as being from Kirinyaga Gichugu location contrary to the data base
  38. The second ID was No 11699126 S. No. 213432706 bearing the name Stanley Waweru Manegene. His details in their records show the ID S No is 2025209803 and he was born in Kirinyaga Central in 1973.
  39. She produced reports PExb 2a & 2b and PExb 7 and asserted that the IDs given to her do not match the details in the records of the Registrar. In cross examination, PW5 referred to the ID given to her as belonging to Ciaraka as fake.
  40. PW6 Martin Ikahu Ngangah is an Advocate of the High Court of Kenya, practicing in Kerugoya. He said that on 31/3/2016 he had five walk-in clients who wanted to do a land sale agreement over LR No Miuu/13963/3767 measuring 3 acres at Kshs 540,000/-. He requested title documents and was given an allotment letter from the County Council. The seller was Stanley Waweru Manegene. The purchasers were Luka Nyamu and Jamleck Muchira
  41. He received the parties' ID cards and drafted the sale agreement. The parties signed or thumb-printed the agreements. The purchasers paid the purchase price although he did not see the bank deposit slips. One of the witnesses was Ciaraka Wanjiru, whose relation to the parties he could not tell. He identified the copies of IDs PExbs 2a and 2b.
  42. In cross examination, he noted that the vendor received the purchase price as per the agreement and that it was not standard practice for a witness to be given the purchase price. He said the appellant's face was unfamiliar as the clients were all walk in clients that he saw for the first time.
  43. PW7 Arthur Kamau Munene was the County Assistant Director of Security and Compliance. He testified that the title Mwea/Miuu/13963/3767 belonged to Stanley Manegene through allotment by the defunct Council; that the allottee are in a register of owners, and their ID numbers are in the



- application forms. He identified the survey fee receipt (MFI 1); and confirmed that title deeds had not been issued in Ngariama Scheme.
44. In cross examination, he stated that PExb 8 had not been issued to Manegene as an ownership document; and that Manegene had not completed payment. In re-examination he stated that when an original owner has not completed payment they do not allow a transfer to take place.
  45. PW8 Cpl Eleseba Bungei was the Investigating Officer. She testified that the case was reported in July 2016 by Luka Nyamu and Jamleck Gathara who claimed the accused conned them of money involving sale of Title No Mwea/Muui/13963/3769. According to her, the victims reported that the accused had claimed to be the wife of Stanley Waweru Manegene and introduced herself as Ciaraka Wanjiru Murage. She introduced Luka Nyamu to then transaction and pointed out the land in Ngariama. They then went to an advocates office in Kerugoya and signed a sale agreement, PExb 4.
  46. Later, Luka Nyamu discovered that Ciaraka Wanjiru was actually Rosemary Mithamo and the police arrested and charged her. She was not able to trace the Stanly Manegene in the sale agreement, but they traced th genuine Stanley who came with his wife. The complainants were unable to identify the real Stanley or his wife.
  47. PW8 produced PExb 3, the withdrawal slip from the Co-operative Bank; PExb4 the sale agreement; PExb 5&6 the receipts from the County Council. She said she charged the accused with the various counts because the accused used a fake ID to sell land and as a result obtained money with a person she described as her husband.
  48. In cross examination, she admitted that she had not witnessed the accused making of a false document; and that the ID was in her possession. She stated that it was not possible to doctor a photocopy of an ID card. She also admitted that she did not witness the payment of the purchase price and relied on the statements of the victims
  49. In her defence, the Accused gave a sworn statement and denied the charges. She said she was a business lady living in Thika; that she was arrested whilst in court and was told at the police station that she had taken PW1s money; that PW1 was brought to the station and said he knew her husband had taken 540,000/- over a land sale.
  50. She said she had no knowledge of the alleged parcel of land whose sale she was alleged to be a witness of; that PW1 claimed he would maintain his position because she had another similar case in court and that she was shown a sale agreement which had names different from hers. She claimed she had lost her identity card in January in Mwea and had reported, hence she didn't have an ID card at the time.
  51. The accused alleged the case was a frame up by Luka because of the case in court, yet she didn't know him.
  52. It is on this evidence that the accused was convicted and sentenced by the trial court.

### **The Ingredients of the offences**

53. The first count was obtaining money by false pretenses. For the offence to hold, the prosecution must prove the three essential elements of the offence of obtaining by false pretences, namely:
  - i. Obtaining something capable of being stolen;
  - ii. Obtaining through false pretences; and
  - iii. Obtaining with intent to defraud.



54. In the case *Gerald Ndobbo Munjuga v R* HC Criminal Appeal No. 213 of 2011 (Nyeri) Mativo, J, quoting with approval from the High Court of Botswana in *Lesholo & Another v The State*, which case dealt with an offence of this nature, the court held:
- i. To prove the offence of obtaining by false pretence, the accused must by a false pretence, with intent to defraud, obtain something of value capable of being stolen from another person. The prosecution must prove the false pretence together with a fraudulent intention in obtaining the property of the person cheated.
  - ii. A false pretence has been held to be a representation by the accused person which to his knowledge is not true. A false pretence will constitute a false pretence when it relates to a present or past fact or facts. It is not false pretence if it is made in relation to the future even if it is made fraudulently. Where however the representation speaks both of a future promise and couples it with false statements of existing or past facts the representation will amount to a false pretence if the alleged existing facts are false.
  - iii. .... The representation must be made with the specific purpose of getting money from the complainant which he/she would not have given had the true facts been revealed to him.”
55. Was there something capable of being stolen? The money with which the complainants sought to buy the land was capable of being stolen. The evidence of PW1 and 2 was that the accused showed them the land, and they negotiated its price. PW1 & 2 testified that the 600,000/- was withdrawn from their mother’s account in Cooperative Bank. It was from this amount that they paid the Kshs 540,000/- purchase money. PW1 said in cross examination that his mother had carried the money, gave it to the Manegene who gave it to the accused posing as his wife.
56. PW2s evidence was that the purchase money was given to the accused; and PW3s evidence was that
57. The accused clearly represented herself as capable of selling the land. She was the one who showed it to PW1,2, and 3. The money was given on the strength of the representation. This occurred in relation to the facts then at hand. It constituted a false pretence it relates to a present or past fact or facts as to the ownership of the land by her alleged husband. It is also clear that as a result of the false pretence she received the money.
58. The trial magistrate found the accused initiated the transaction, and obtained the money through Manegene. From the foregoing, all the ingredients of the offence were proved, and the trial magistrate cannot be faulted for the conviction.
59. The second count was that of making a false document. The offence has been well described in authorities. In *Serpepi Sanja Siromo v Republic* [2020] eKLR the court stated that:
- “Section 345 of the *Penal Code* defines forgery as “the making of a false document with intent to defraud or to 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 appellant forged the sale agreement dated 20<sup>th</sup> November 2008; it was false and was intended to defraud.
60. In *Patrick Njuguna Richu v Republic* [2018] eKLR the court adopted the definition of a false document as defined in *R v Dodge and Harris* (1971) 2 ALL E.R. 1523 and stated:
- “A document is false must tell a lie about itself and not about the maker. We think the position is better put, by stating that, the false document is forged if it is made to be used as



genuine. To defraud is, by deceit, to induce a course of action: Omar Bin Salem V R(1950) 17 EACA 158, and to defraud is not confined to the idea of depriving a man by deceit of some economic advantage or inflicting upon him some economic loss” see Samuel –v- Republic.”

61. The ingredients which prove the offence are: that the document is made by the accused; that the document tells a lie about itself; and that the document is made so as to be used as if it were genuine.
62. In *Dennis Binyenya v Republic* [2018] eKLR the court held that 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.
63. In *R v Dodge and Harris*[1971] 2 All ER 1523 Phillimore L.J further broke down the definition of a false document as follows:

“A document is false... if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it or authorize its making ... or if, though made by or on behalf of or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material,

.....

...and in particular a document is false:- (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.”
64. In summary, all these authorities lay out the principles that a document is false if it tells an untruth about itself, or contains material alterations, and is intended to be used as if it were genuine.
65. The evidence here was that the ID card of the accused was produced to the Advocate as a witness to the sale agreement that he drew for the transaction. PW6 said he was given the ID cards to draw the agreement; his secretary or receptionist took the IDs and photocopied them. He confirmed he drew the agreement, with the ID Number of Ciriaka Wanjiru Murage, No 14077934 printed into agreement, as one of the witnesses. Similarly, all the parties’ ID numbers were printed into the agreement.
66. When the photocopy of the card with the name of Ciriaka Wanjiru was given to the Registrar of Persons PW5, she compared it to the official records. She found that the ID Number belonged to a person known by that name (Ciriaka Wanjiru Murage) who was born in 1948, whilst the photocopy showed the holder to have been born in 1968. PW6 confirmed the ID given to her to “differs with [the] records”, and described it as a “fake” ID.
67. PW1, 2 and 3 confirmed that the accused was the person who was present at the signing of the agreement and was the one to whom the purchase money was eventually given. Consequently, despite her denials, the strong evidence of the witnesses PW1-3 and 6 places the ID in her possession at the



signing of the sale agreement, whilst the evidence of PW5 shows that the ID she produced and which was relied upon was a fake.

68. On this count, I also find no basis to interfere with the trial court's findings and conclusions.
69. The third count was the offence of personation. The offence is proved if the prosecution can show that the accused falsely represented himself to be some other person.
70. The offence was dealt with by Muriithi, J in *Gideon Leteipa Lenkume v Republic* [2020] eKLR, Muriithi, J as follows:

“The offence of personation c/s 382 of the *Penal Code* carries a sentence of imprisonment as follows:

382. Personation in general

1. Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanor.
2. If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.”

The section 382 creates two offences (1) where the offender only “falsely represents himself to be some other person” and (2) where the offender represents that he is “entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof”. In the former case he is liable to be punished under the general penalty for misdemeanour. In the latter special category the offender is liable to be punished by imprisonment for seven years.”

71. It is clear from the evidence already analysed, that the accused represented herself as, and went by, the name Ciaraka Wanjiru Murage; she gave an ID by that name to PW6 who printed it into the sale agreement where she was a witness, and also obtained the purchase money from Manegene.
72. This is a clear case that the accused falsely representing herself to be Ciaraka Wanjiru Murage, Additionally, she also falsely represented herself as the wife to the land owner, Stanley Manegene. The trial magistrate was entitled to make the conviction on this basis
73. The defendant's evidence that she lost her ID card and was surprised to see a copy in court. She did not indicate whether she had ever followed up the lost card, and that evidence appears merely convenient. She said she had another case in court 1 with similar charges, and attributed the present case to a frame up by Luka PW3, as follows:

“This case is a frame up by Luka because of the case in court 1, yet I don't even know him”

74. Her evidence here is curious to say the least. The appellant asserted that there was a frame up by Luka a person she said she did not even know. It is not reasonable to accept, without further explanation, that there would be a frame up by a person one doesn't know and with unexplained motive.
75. Consequently, I do not find her evidence to be useful in this case. As such, I find no reason to interfere with the trial court's ultimate findings and conclusions, and would not disturb them.
76. Accordingly, the convictions are confirmed in respect of all the counts.



77. Similarly, the sentences affirmed as being in the trial court's powers to hand down. As argued by the prosecution, the trial court's sentence was lenient to the extent that the penalty for count 1 is a maximum of 3 years' imprisonment, count 2 attracts 7 years' imprisonment, and count 3 attracts up to 3 years. The exercise of the trial magistrate's discretion in sentencing cannot be faulted.
78. The appeal is therefore dismissed in its entirety.
79. Orders Accordingly.

**DELIVERED AT KERUGOYA ON THIS 23RD DAY OF JUNE, 2022**

**R MWONGO**

**JUDGE**

Delivered in the presence of:

Rosemary Mithamo, Appellant in Person

Mr. Mamba for the Respondent

Mr. Murage, Court Assistant

