



**Kuria v Republic (Criminal Appeal E188 of 2019)
[2022] KEHC 15041 (KLR) (Crim) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 15041 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E188 OF 2019
JM BWONWONG'A, J
OCTOBER 26, 2022**

BETWEEN

REGINA NYOKABI KURIA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being appeal from the judgement of the Hon. J. Andayi W. F., CM,
dated 10/09/2019 in the Chief Magistrates' Court at Milimani in
Criminal Case No. 1605 of 2012, Republic v Regina Nyokabi Kuria)*

JUDGMENT

1. The appellants have appealed against conviction in respect of the offence of obtaining registration by false pretences contrary to section 320 of the [Penal Code](#) (Cap 63) Laws of Kenya.
2. The appellant in his petition of appeal has raised 7 grounds of appeal in this court.
3. In a coalesced form, the appellant has in grounds, 3 and 4 through her counsel (Mr. Kang'ahi), faulted the learned trial Chief Magistrate in law and fact in convicting her when there was no sufficient evidence. In this regard, the evidence of the complainant, Nishit Yogendra Patel (PW 1) was that on 11/6/2012 he received information there were intruders who were subdividing his land parcel No. 12442; which is along Kiambu road in Nairobi. Initially the land was in the name of his deceased father.
4. PW 1 sent his workers namely Peter Mado Mkokha (PW 2) and Muli Ndolo Makau (PW 3) to the land. PW 3 told those who were trying to subdivide that land that they had gone to arrest them. In response those men who were subdividing the land told PW 3 that they were going to arrest them (PW 2 and PW 3). PW 3 testified that he had worked on the suit land for more than 30 years.



5. In addition to the PW 1, PW 2 and PW 3 the prosecution called Frederick Indoko Lubulela (PW 5). PW 5 testified that he was a senior land registrar in the Ministry of Lands. He testified that entry numbers 7, 8 and 10 on the title deed which were alleging that the land had been transferred from the original owners namely Yogemndra Purshottam, Patel, Rajnikant Purshottam Patel and Prahlad Purshottam Patel were forgeries. PW 5 who was alleged to have made the said entries disowned them.
6. Sarah Chelimo Maina (6), was the chief land registrar who testified that the said entries namely numbers 7, 8 and 10 were cancelled because they were found to have been forged. According PW 6 these entries had no supporting documents. PW 6 further testified that they had a movement book/register called the morning list that is prepared by the officer in charge of receiving documents at the counter; which is then presented to the officer in the strong room to retrieve the file.
7. The evidence of PW 5 is supported by No. 230925 CIP Jacob Oduor, the document examiner (PW 4). It was his evidence that PW 5 did not make the entries on the title deed held by the appellant. He produced his report as exhibit 13.

The case for the defence

8. The appellant testified on oath and called two witnesses. Her evidence was that she is a shareholder and was one the directors of Claude-Lyons E.A. Co. Ltd. She testified that her company purchased the subject land and were issued with a title deed. She also testified a Mr. Kosgey granted her company permission to have the subject land to be divided. There was a sale agreement dated 12th December 2005; defence exhibit 13. She also produced the original title deed as defence exhibit 15.
9. While under cross examination, the appellant testified that she did not produce the stamp duty receipt for the transfer. She also testified that she did not know how her company purchased the subject land. She further testified that she knew how the company purchased the subject land.

In particular, she testified that:

“We sat a meeting and the directors were chosen to purchase and do a transfer and I was not even part of those people and yet I was arrested.”

10. She continued to be cross examined in respect of which she testified that:

“Claude-Lyons is our company, we are five directors, I am one them, when asked who the others are she says that was the work of the investigating officer to find out.”

11. The appellant called Emmanuel Karisa Kenga (DW 2), a former document examiner who had retired. He testified that Nyaribo & Co. Advocates forwarded to him copies of two documents for land reference No. LR No. 33904 and specimen signatures of one Frederick Indoko Lubulela (PW 5) and stamp impressions of the same officer together with his known signatures.
12. DW 2 continued to testify that the methodology used was mile scope and magnifying glasses and good observation. His opinion and observation were based on the following factors. -

Styles of the signatures.

Pon movement.

Pon strikes.

Pon lifts.



Alignment.

13. As regards the stamp impressions, DW 2 considered the forms of prints. DW 2 then prepared a comparison chart between the questioned signatures and the specimen signatures as well as the stamp impressions. DW 2 the produced his report as exhibit 5.
14. After analyzing them he concluded that the signatures were made by Frederick Indoko Lubulela (PW 5). He also concluded that the stamp impressions were made by the same instruments.
15. Under cross examination, DW 2 testified that the documents forwarded to him were photocopies of title deeds and he never saw the originals. Stamp impressions were also made available to him. He also testified that the best documents to work upon are original documents; in their absence copies can be used.
16. This is a first appeal. As a first appeal court, I am required to re-evaluate the entire evidence and make my own independent findings bearing in mind that I did not see and hear the witnesses. I am also required to consider the submissions of the parties.
17. After doing so I find that it is common cause that the subject document that is the title deed to the subject land was in possession of the appellant. Her defence is that it is a genuine title deed in respect of the subject land of their company known as Claude-Lyons E.A. Co. Ltd; in which she is one of the directors. I find that there is ample and credible evidence of the senior land registrar, Frederick Indoko Lubulela (PW 5) that the subject title deed was a forgery. This is confirmed by the credible document examiner, No. 230925 CIP Jacob Oduor (PW 4) that the subject title deed was a forgery. There is further supporting and credible evidence of the chief land registrar, Sarah Chelimo Maina (6).
18. Furthermore, I find that the defence evidence of the appellant (DW 1) is incredible and is not worthy of believe. There are instances that shows that her evidence is incredible. While under cross examination, when asked who the other directors are by the prosecutor, DW 1 testified that that was the work of the investigating officer to find out.
19. The appellant contradicted herself when she testified that she did not know how her company purchased the subject land. She further testified in the same vein that she knew how the company purchased the subject land.
20. Additionally, the appellant testified that: “We sat a meeting and the directors were chosen to purchase and do a transfer and I was not even part of those people and yet I was arrested.”
21. I further find that the evidence of the defence document examiner, Emmanuel Karisa Kenga (DW 2) was equally incredible. Under cross examination, DW 2 testified that he used photocopies of the documents to analyze what had been forwarded by Mr. Nyaribo advocates. I find that on the evidence that the photocopies are not suitable for analysis purposes.
22. On the totality of the evidence produced I find that the prosecution proved their case beyond reasonable doubt.
23. As regards, sentence I find that the sentence of a fine of shs 20,000/- imposed was not excessive.
24. In the premises, the appeal fails and is hereby dismissed in its entirety.

JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF OCTOBER, 2022.

J M BWONWONG'A



JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr. Kang'ahi for the applicant

Mr. Kiragu for the Respondent

