



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 93 OF 2018

(From original Sentences dated 12/06/2018 in Nanyuki CM Criminal Case No 520 of 2016 – L Mutai, CM)

MARGARET WAITHERA FURE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **MARGARET WAITHERA FURE** (who was the 2nd accused before the trial court), was convicted of 5 counts as follows-

- Count I: Conspiracy to defraud contrary to section 317 of the Penal Code.
- Counts II & III: Making a false document contrary to section 347(d) (i) of the Penal Code.
- Count IV: Personation contrary to section 382 of the Penal Code.
- Count V: Obtaining money by false pretenses contrary to section 313 of the Penal Code.

2. The Appellant was sentenced as follows on 12/06/2018 -

- Count I: 2½ years imprisonment.
- Count II, III & IV: 1 year imprisonment in each
- Count V: 3 years imprisonment.

The sentences were to run concurrently.

The Appellant has appealed against the sentences only.

3. The Appellant's two co-accused were similarly convicted and sentenced in counts I and V. It is not clear if they appealed.

4. I have considered the submissions of the Appellant and those of the learned prosecution counsel in regard to sentence.

5. It is necessary, however, to say something about the offence charged against the Appellant in counts II and III – **making a false document contrary to section 347 of the Penal Code**. Making a false document, of itself, is not an offence. It is merely the *actus reus* of the offence of **forgery** contrary to section 345 of the Penal Code:

“345. Forgery is the making of a false document with intent to defraud or to deceive.”

The *mens rea* of the offence of forgery thus is the *intent to defraud or to deceive*.

6. The Appellant was thus charged with a non-existent offence in counts II and III, and her convictions therefor must be quashed. The sentences imposed for those two counts have, unfortunately, been served already.

7. Regarding the sentences for counts I, IV and V, I have considered the elaborate circumstances in which those offences were committed.

Given the emotive nature of all matters land in our country, the seriousness of the offences cannot be gainsaid. I note that the maximum sentence for the offence of conspiracy in count I is 3 years imprisonment; and that the offences of personation in general and obtaining by false pretenses are misdemeanors punishable, where a term of imprisonment is imposed, by no more than 3 years imprisonment.

8. For count I the Appellant got 2½ years imprisonment, not far from the maximum. For count V she got the maximum of 3 years imprisonment.

9. In her mitigation the Appellant stated that she was a single mother with children. She, like her co-accused, was also a first offender.

10. In these circumstances, I am satisfied that the sentences in counts I and V were manifestly harsh and excessive. I will in the circumstances set aside those sentences of 2½ and 3 years imprisonment and substitute sentences of 2 years imprisonment in each of those two counts with effect from 12/06/2018 when the Appellant was sentenced. The sentences shall of course run concurrently. It is so ordered. To that limited extent only does the Appellant's appeal against sentence succeed.

DATED AND SIGNED AT NANYUKI THIS 17TH DAY OF JANUARY 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 30TH DAY OF JANUARY 2020