



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL DIVISION

CRIMINAL APPEAL CASE NO. 178B OF 2019

LESIT, J.

PETER WANJOHI GITONGA.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. J. Kamau (Ms.) SRM dated 20th August, 2019 in Kibera Chief Magistrate's Court, Criminal Case No. 5077 of 2014)

JUDGMENT

1. The Appellant **PETER WANJOHI GITONGA** was charged with three Counts of offences as follows:

“COUNT 1:

FORGERY CONTRARY TO SECTION 345 AS READ WITH SECTION 349 OF THE PENAL CODE

PETER WANJOHI GITONGA: On the 7th day of August 2013 at Kiserian Town in Kajiado North Sub County within Kajiado County, with intent to defraud, forged a signature of **WILSON KANDIE** on a letter of undertaking Ref. No. O,N/MISC/2013 dated 7th August 2013, purporting to be genuine and valid letter of undertaking signed by **WILSON KANDIE**.

COUNT 2

FALSE SWEARING CONTRARY TO SECTION 114 AS READ WITH SECTION 36 OF THE PENAL CODE

PETER WANJOHI GITONGA: On 7th day of August 2013 at **ONYANCHA NYAKUNDI** and company advocate Kiserian Centre Ngong, in Kajiado North Sub-County within Kajiado County, before **JAMES OGOTI AGATA** an advocate, a person authorized to administer an oath or affirmation, made falsely declaration upon a matter of public concern to the effect that he was undertaking sale of land parcel NO. **KAJIADO/LOODARIAK/3073** registered in the names of **SORKET OLE LEPISH** to process a title deed in favour of **WILSON KANDIE CHEBET** a fact he knew to be false statement.

COUNT 3

OBTAINING MONEY BY FALSE PRETENCE CONTRARY TO SECTION 313 OF THE PENAL CODE

PETER WANJOHI GITONGA: On diverse dates between 7th day of August 2013 and on 21st day of June 2014 at Kiserian Centre Ngong, in Kajiado North Sub-County within Kajiado County, obtained from **JAMES WAEMA MUTULU** cash of KShs.1,250,000/= by falsely pretending that you were in a position to sell land parcel NO. **KAJIADO/LOODARIAK/3073** to **JAMES WAEMA MUTULU** and that he was authorized by **WILSON KANDIE CHEBET** to sell the said land parcel on his behalf a fact he knew to be false.”

2. After the trial, the Appellant was convicted of counts 1 and 3 and sentenced to a fine of KShs. 500,000/= in default 4 years imprisonment in count 1 and one year's imprisonment in count 3.

3. The Appellant was aggrieved by the conviction and sentence and filed his Petition of Appeal in which he raised eight grounds of appeal as follows:

- (1) **That the honourable trial magistrate erred in law and fact by holding that the prosecution had proved their case against the appellant beyond reasonable doubts.**
- (2) **That the honourable trial magistrate erred in law and fact that the judgment of the court is not supported by evidence and indeed the decision is wholly against the weight of the evidence.**
- (3) **That the honourable trial magistrate erred in law and facts by convicting me on the charge of forgery despite the complete want of evidence to support the charge and or the allegations made.**
- (4) **That the court erred in failing to consider or to consider adequately the absence of any evidence showing that the appellant forged the document in question.**
- (5) **That the honourable trial magistrate erred in law and facts by grossly misdirected herself in her holding that the document examiner was presented with the specimen signature of the appellant when he himself did not tender such testimony and indeed available evidence showed otherwise.**
- (6) **That the learned magistrate erred in law and grossly misdirected herself in failing to consider or to consider adequately submissions that the record of the courts was incomplete and such failure occasioned miscarriage of justice.**
- (7) **That the holding of the court that PW2 testified that I had broken into his office is not borne by the evidence on record and evidences attempt by the court to impute and rely on extrinsic material to the dire prejudice of the appellant.**
- (8) **That having regard to the totality of evidence it is clear that none of the charges was proved to the required standards and as a consequence all the findings and entire judgment cannot be sustained and ought to be quashed.**

4. The appeal was argued by Mr. Wandugi Karathe advocate. Counsel submitted that the charge of forgery was not proved because the Appellant was alleged to have forged the signature of PW1 yet PW3 the Document Examiner did not say that the Appellant signed the said document. Counsel urged that PW3 was not given any samples of signatures from the Appellant and that the learned trial magistrate is directed herself when she found that he was given.

5. Mr. Wandugi urged that nowhere in the learned trial magistrate's judgment did she find that the Exhibits 3 was forged and in the circumstances the conviction for this charge cannot stand. Counsel urged that the maximum sentence for forgery contrary to **section 349** of the **Penal Code** was 3 years' imprisonment and therefore the sentence of 4 years' imprisonment was illegal.

6. Regarding **obtaining by false pretence** learned defence counsel urged that the complainant in that charge was not called as a prosecution but as a defence witness. Counsel urged further that even then the charge could not stand since the evidence of PW1 was clear that the transaction in issue in the case was in the future.

7. Mr. Wandugi challenged the record of the court saying there was a serious problem with it which could lead to miscarriage of justice. He urged that a page of the proceedings was missing and that there was tampering of the record. Counsel urged that the learned trial magistrate's action of reconstructing the record and sanitizing them was a serious misdirection.

8. Ms Ndombi, Learned Prosecution Counsel opposed the appeal on behalf of the State. Counsel urged that the charge of forgery was proved to required standard. Counsel urged that PW1's evidence that he did not sign the document exhibit 3 was corroborated by PW3 the Document Examiner and PW2 the advocate. Counsel urged that PW2's evidence was that the accused carried away the document promising to give it to PW1 to sign which apparently he did not do.

9. In regard to the charge of **obtaining by false pretence** learned prosecution counsel urged that the Appellant used the undertaking Exh.3 to transfer Parcel No. 3073 to DW3 for a consideration of KShs.1,300,000/=. Counsel urged that the money was not received by PW1.

10. In regard to the transferring of proceedings Ms. Ndombi urged that if there was any missing record, it touched on the release of the Appellant against a contact person and had nothing to do with the evidence adduced in the case.

11. Regarding sentence Counsel admitted there was an error but urged that it can be corrected under **section 382** of the **Criminal Procedure Code**.

12. This is the first appellate court whose mandate includes subjecting the entire evidence to a fresh analysis and evaluation and drawing own conclusions. I am guided by case of **OKENO VS. REPUBLIC 1972 EA 32** where the Court of Appeal set out the duties of the first appellate court as follows:

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya vs. Republic (1957) EA. 336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala vs. R. (1957) EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide

whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses."

13. I have considered the petition of appeal, the submissions of both counsels for the Appellant and the Respondent. I have also subjected the entire evidence to afresh analysis and evaluation and have drawn my own conclusions over the matter.

14. I will first deal with a very preliminary issue of the "tampering" with the proceedings. That issue was raised before court at the trial. The complacent was not that there was tampering with the record, but that a page of the proceedings was missing. The issue first arose on 5th August 2019 before Hon. Kitagwa, Senior Resident Magistrate. Apparently Hon. Kamau who was the trial magistrate was away on transfer.

15. Hon. Kitagwa recorded that a page of the record for the proceedings which took place on 26th July, 2019 when he issued a warrant of arrest for the Appellant, was missing. The Hon. Kitagwa then concluded that the proceedings had been tampered with and referred the matter back to the Chief Magistrate same day for directions.

16. Mr. Wandugi challenges the conclusion arrived at by Hon. Kamau in regard to the proceedings of a 26th July 2019 and urged the court to order a retrial or acquit the Appellant.

17. I have perused the record of the proceedings. The case was heard and matter concluded on 24th April 2019. That was three months before the date of the proceedings being questioned. The learned trial magistrate was right when she observed that the missing page of the record had to do with an order for the arrest of the Appellant for failing to turn up for judgment. It had nothing to do with the evidence of the case. The evidence is intact. No prejudice was suffered by the Appellant or any party in the case and the request for a retrial is wholly unwarranted. I uphold the learned trial magistrate's finding on that point.

18. I also noted a topographical error in numbering of the defence witnesses. The Appellant's witness testified on 18th March, 2019. The Appellant testified on 2nd April 2019. Even then the evidence of the witness, who testified before the Appellant was numbered as DW2 while the Appellant's evidence was numbered as DW1. Numbering of witnesses, whether for the prosecution or defence, should follow numerical sequence. Subject of course to those re-called and instances where there has been striking out of evidence and standing down of a witness. The error is however merely topographical and does not cause any prejudice to the Appellant.

19. Getting to the appeal itself it has been urged that the conviction on count 1 is unsafe. The reasons given are that PW3 the Document Examiner did not say that it was the Appellant who signed the document, and that therefore there was no evidence against the Appellant to support the charge.

20. The Learned Trial Magistrate set out the provisions of **section 349 of Penal Code** where the punishment for offence of forgery is given thus:

"Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years".

21. The Learned trial magistrate cited an Indian case which sets out the ingredients for the offence of forgery. This is the case of *Sukanti Chaudhry vs. State of Orisa CRL Rev. No. 1407 of 2008*. From this case the ingredients for the offence are, there must be a document or writing; it must be forged by the accused; and, the accused must have used it with the intention that the forged document will be acted upon to the prejudice of the victim.

22. The document which is the subject matter of count 1 was a letter of undertaking. It is alleged in the particulars of the charge that the Appellant forged the signature of Wilson Kandie, PW1 in the case, on a letter of undertaking purporting it to be a genuine and valid letter of undertaking signed by Wilson Kandie. The full content of the undertaking is as follows:

"UNDERTAKING"

'I PETER WANJOHI GITONGA of National Identity Card Number 13541790 do hereby on this 7th Day of AUGUST, 2013 make this undertaking that I am the one who is in the custody of original Title Deed Reg. No. KJD.LOODARIAK/3073 registered in the name of SORKET OLE LEPISH ID NO. 6852035 (the vendor) measuring the approximate area 6.30 HA or thereabout. I undertake that I shall process the said title deed in favour of the purchaser WILSON KANDIE CHEBET. The said WILSON KANDIE CHEBET had initially purchased twenty five (25) acres of land from the vendor in a different Title deed but the purchaser later shortchanged him by disposing the same land to other parties without his consent and knowledge. The dispute arose between the vendor and the purchaser but was later sorted out before the law firm of ONYANCHA NYAKUNDI & CO. ADVOCATES whereby it was agreed that the vendor shall transfer thirteen (13) acres of land to the purchaser. Now MR. WILSON KANDIE CHEBET has instructed me to transfer the said Title deed in his favour and upon transferring it to him, I shall find a prospective purchaser to purchase his land (13) acres. We have agreed that out of the thirteen acres, he shall only be entitled to the purchase price of eight (8) acres only. Whatever amount that shall be realized from the sale of five (5) acres shall be share between me and the advocate JAMES OGOTI AGATA of ONYANCHA NYAKUNDI & CO. ADVOCATES.

This undertaking is made on this 7th day of AUGUST, 2013.

By the said

PETER WANJOHI GITONGA.....SIGNED

ID NO. 13541790

WILSON KANDIE CHEBET.....SIGNED

ID NO. 1370801

IN THE PRESENCE OF:

JAMES OGOTI AGATA ADVOCATES.....SIGNED

DATE 7/8/2013

DRAWN & FILED BY:

ONYANCHA, NYAKUNDI & CO. ADVOCATES

P.O. BOX 667-00206

KISERIAN.”

23. I have perused the learned trial magistrate’s judgement on this issue. In order to determine whether forgery in terms of section 349 of the Penal Code has been proved in this case, one must answer the question whether the prosecution proved the ingredients of the said offence.

24. Phillimore L.J broke down the definition of forgery in R v Dodge and Harris [1971] 2 All ER 1523 as:

“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, ... is falsely stated therein; 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.”

25. The Court of Appeal in Joseph Mukuha Kimani v Republic (Criminal Appeal No. 76 of 83) [1984] eKLR held:

“The prosecution must prove that:

(a) the document was false; in the sense that, it was forged

(b) the accused knew it was forged

(c) the utterer intended to defraud.

In the case of KILEE v REPUBLIC[1967] EA 713 at p 717, it was said that, the false document 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 SAMUELS v REPUBLIC[1968] 1.”

26. Mativo J in Caroline Wanjiku Ngugi v Republic[2015] eKLR held that:

“Forgery is the false making or material alteration of a writing, where the writing has the apparent ability to defraud and is of apparent legal efficacy with the intent to defraud. Thus the elements of forgery are:-

i. False making of – The person must have taken paper and ink and created a false document from scratch. Forgery is limited to documents. “Writing” includes anything handwritten, type written, computer generated or engraved.

ii. Material alteration – the person must have taken a genuine document and changed it in some significant way. It is meant to cover situations involving false signatures or improperly filling in blanks on a form or altering the genuine contents of the document.

iii. *Ability to defraud* – *The document or writing has to look genuine enough to qualify as having ability to mislead others to think its genuine.*

iv. *Legal efficacy* – *the document or writing has to have some legal significance.*

v. *Intent to defraud* – *the specific state of mind for forgery does not require intent to steal but only intent to fool people. The person must have intended that other people regard something false as genuine. A forgery may be committed either by handwriting, through the use of type writer or a computer.”*

27. This definition sets out as its first element the need to prove that the person charged was indeed the one who put ink to paper and created the document deemed a forgery. This is further reaffirmed in **R v Gambling [1974] 3 All ER 479** where the court held that:

“...‘forgery is the making of a false document in order that it may be used as genuine.’ This definition involves two considerations: first, that the relevant document should be false; and secondly, that it was made in order that it might be used as genuine. [...]

Given [...] that each application was ‘false’ was it made ‘in order that it might be used as genuine’? Indeed, what do these words involve in the context of the present case? Clearly they require proof of an intent on the part of the maker of the false document that it shall in fact be used as genuine. We think that they also involve that the untrue statement in the document must be the reason or one of the reasons which results in the document being accepted as genuine when it is thereafter used by the maker. It is this concept which we think is sought to be expressed in the aphorism – as to the usefulness of which views may differ strongly – that the document must not only tell a lie, it must tell a lie about itself. [...] If this is correct, then it seems to us to follow that in cases such as the present in which the falsity of a document arises from the use of a fictitious name or signature, or both, then that document is a forgery only if, as counsel for the appellant contended, having regard to all the circumstances of the transaction, the identity of the maker of the document is a material factor. [...]

In many cases the materiality of the identity of the maker would be so obvious that evidence would be unnecessary: for example, when the document is a cheque or a bill of exchange and the purported signature of the drawer, or endorser, or the acceptor has been written by the someone other than the person whose signature it purports to be. In other cases, such as the present, evidence would be required, and the materiality or otherwise of the identity of the maker of the document must be a matter for the [court].”

28. The maker of the Undertaking was PW2, an advocate practicing in the firm of Onyancha Nyakundi & Co Advocates. He testified that he drew the Undertaking after the Appellant, the Vendor and the Complainant agreed during a meeting in which Police were present. PW2 also said that when he prepared the Undertaking, the Appellant signed his bit, then promised to take it to the Complainant to sign.

29. The Complainant, PW1 has denied ever seeing the document or signing it. PW3, a Document Examiner corroborated that evidence. PW2 was clear that he was not present when the document was allegedly signed against the PW1’s name and could not tell who signed it. The Complainant denied most of the content of the document, making it clear that what he agreed with the Vendor was he would compensate him for monies and land lost due to selling land he had sold to him to another person. PW1 said that the agreement was further that the Appellant processes the transfer of the land parcel No. 3075, from the Vendor to the Complainant, and then get purchasers for the Complainant for the land.

30. I noted that while the entire document was in typing, the name of the Complainant was written by hand. There is no doubt, and I agree with the learned trial Magistrate’s finding that the signature purported to be that of the Complainant was not appended by him.

31. The learned trial magistrate framed three issues in regard to the undertaking. The first one was whether the document was forged which she answered affirmatively. The second issue was whether the Appellant used the undertaking as genuine and whether he knew that the undertaking was forged to which she answered affirmatively.

32. Were those questions sufficient to consider whether forgery in this case was proved. The question to ask oneself is whether the prosecution has adduced evidence to establish that the Appellant used the undertaking to deceive and or defraud. That is however not the only manner in which forgery is proved. It is still forgery if it is shown that the document was used to induce a course of action, and to defraud, is not necessary confined to the idea of depriving a man by deceit of some economic advantage or inflicting upon him some economic loss [**OMAR BIN SALEM v R [1950] 17 EACA 158.**]

33. Bearing in mind the document in issue is a Letter of Undertaking, one must ask oneself what it is, and whether it has legal efficacy. An Undertaking is defined as *“an assurance by one party to another party that they will fulfill the obligation that has been agreed upon.”* Or a *“formal pledge or promise to do something”*.

34. The Undertaking was an assurance made by the Appellant to the Vendor, the Complainant and signed by the advocate, PW2. It has legal efficacy, as to a future conduct of the party or parties. It is not a document that could be used to induce any dealing on land at the Land Registry. It could not be used to transfer land, for instance. So, even though the Undertaking had a forged signature of the Complainant, it had no legal efficacy to transfer or transact in land. The intention to defraud or deceive, or induce a course of action is missing. The charge of **forgery** contrary to **section 349** of the **Penal Code** could therefore not stand.

35. As for the charge of **Obtaining by false pretences** contrary to **section 313** of the **Penal Code**. The charge alleges that the Appellant received certain amount of money from his own witness, DW2, by falsely pretending he could sell land to him authorized by the Complainant. The evidence adduced by the Complainant was that the Appellant introduced DW2 to him as a potential purchaser for the **land 3073**. DW2 even gave him a cheque for 700,000/- (which later bounced), as part of the purchase price. The Appellant cannot be said to have

falsely pretended to DW2 that he could sell land to him.

36. In any event, the loser in the transaction was not DW2, but the Complainant. PW1 was given a cheque as part payment which bounced. When he visited the Land Registry, he found that there was a transfer of his land from himself to third parties and immediately lodged a **CAUTION, Exhibit 5**. DW2 testified that he was acting for principles who successfully purchased the land. He lost nothing in the transaction. It is the Complainant who should have been the Complainant in respect of this charge. The charge cannot therefore stand.

37. This brings me to some serious flaws I observed in this case. It left me wondering whether the investigations were serious, whether professionals were involved and whether the case received a nod from the ODPP, given these shortcomings.

38. There were several important persons not called as witnesses, yet they were key to the determination of the truth and for purposes of creating a clear picture of the case. First of all, the central person in this case was the Vendor of Land Ref No. **Kajiado/Loodariak 2225** and Land Ref No. **Kajiado/Loodariak/3073**. His name was given as **Sorket Ole Lepesh**. He was a key witness in this case as he was the one who was selling his land to the Complainant. The entire case hinges on the two pieces of land he offered for sale to PW1. He was not called as a witness.

39. The other key witness should have been the Land Registrar. Not only was it important to have them testify, but equally important he needed to explain certain issues which came up at the trial, including how the land parcel in issue was transferred between the parties, one of the transactions without any supporting documentation. There was evidence that the Land **Kajiado/Loodariak/3073** was transferred from the Vendor to PW1 and then from PW1 to Ziwanam Holdings Limited. In support of the transfer from the Vendor to PW1, the transfer forms were produced as **Exhibit 13**, and the Application for Land Board Consent was produced in court as **Exhibit 14**.

40. The letter from the Land Registrar in which he explained lack of documents in support of the transactions transferring the Land **3073** from the Complainant, PW1 to Ziwanam Holdings Limited was produced as **Exhibit 19**. The Land Registrar went further to explain in his letter that no such documents were ever received by them as per their record in the Presentation Register. This means that the transaction in question was illegal, null and void. This transaction should have been the subject of charge. I will revert back to this point later.

41. There was also need to call officers at the Land Registry who normally dealt with entry of records, especially the green card and other related documents, to tell the court who entered the information in the Green card, **Exhibit 12**, and whether the two transfers from Vendor, to PW1 the Complainant to Ziwanam were by the same person. These were critical witnesses and ought to have been called to testify. They may have been co-conspirators as such an action could not have been possible without the involvement of the staff at the Lands Office.

42. The other point I wished to point out is that PW2, the advocate for the Complainant in the transactions in issue in this case did a floppy job and was the reason the complainant lost out. No Sale Agreements were presented in court, neither were they mentioned, meaning they may not have been prepared for the transactions in issue. How could a lawyer be instructed by a client for a land deal not prepare a Sale Agreement? Secondly, the title to the land **Kajiado/Loodariak/2225** was stolen from his office. PW2 said he knew the Appellant was the culprit. But he did nothing about it, neither did he get it back. The loser was PW1. To make it worse, he oversaw a second land sale between PW1 and the Vendor for the land **Kajiado/Loodariak/3073**. Again he drew no Sale Agreement. He then trusted the same land title thief with the transfer of the land from the Vendor to his client.

43. Strangely, PW2 prepared the Letter of Undertaking over the second piece of land. It does not escape one's attention that what he was doing was to secure an interest over the same land. It is clear that PW2 acted in concert with the Appellant to provide for 40% of the Complainant's interest in **3073** to go to the two of them, behind the Complainant's back. He had not agreed to the sharing of that land with PW2 or the Appellant. I find that the advocate did not act professionally in this matter, and he is largely to blame for his slipshod handling of this matter.

44. Regarding the investigations, again it is clear there was laxity in the manner in which the case was investigated. Apart from the numerous number of witnesses who should have been interviewed and included as witnesses, it is clear that those who oversaw this investigation were not keen. They were negligent. There was clear evidence that the Appellant stole a title to land. He was not charged for that. There is clear evidence the Appellant carried out fraudulent transfers at the land office, but he was not charged for that.

45. The offence he should have been charged for is under the Penal Code. Fraud was committed in which the Appellant and accomplices procured an entry on the register of title kept at the Land Registry, transferring the land **Kajiado/Loodariak/3073** from PW1 to Ziwanam, without any supporting documents, causing a transfer of the land 3073 PW1 to Ziwanam.

46. The Complainant was the loser. He received a cheque for 700,00/- from DW2 but, it bounced. The Appellant promised to pay him Kshs. 1.2million for the land deals which went sour, but he failed. The proof the Appellant acknowledged that he owed the Complainant is the Agreement, **Exhibit 4**, signed before CID Officers at Ngong CID Office in Kajiado County. In the Agreement he pledged to pay PW1 Kshs. 1, 200, 000/- on or before 30th September, 2014. He never did.

47. For all these fraudulent acts, the Appellant should have been charged with the offence under **Section 320** of the **Penal Code** Cap 63 Laws of Kenya which provides:

“Any person who willfully procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of misdemeanor and is liable to imprisonment for one year.”

48. I have carefully considered this appeal and come to the conclusion that even though the convictions herein cannot be sustained, for the reasons advanced in this judgment, I cannot countenance an illegality. The transfer of Land No. **Kajiado/Loodariak/3073** from PW1 the Complainant in this case, to Ziwanam Holdings Limited was fraudulent and illegal. Not only for the fact no consideration was paid to the Complainant, but most of all for lack of any supporting document for that transfer. Consequently, that title for **Kajiado/Loodariak/3073**, in

the name of Ziwanam Holdings Limited cannot be allowed to stand. I hereby cancel that title and every entry in its respect should be expunged from the Land Registry record.

49. In the result, the convictions for the offence of **Forgery** contrary to **section 349** and **Obtaining by False pretence** contrary to **section 313** of the **Penal Code** are unsafe and are quashed and the sentences in respect of both charges set aside. The Appellant should be set free forthwith unless he is otherwise lawfully held.

DELIVERED THROUGH TEAMS THIS 22nd DAY OF JULY, 2020.

LESIT, J.

JUDGE

Coram

Lesit, J. Judge

Gitonga Court Assistant

Mr. Wandugi For the Appellant

Ms Nyauncho For the State

Appellant

ORDER

The judgement and order of this court be extracted and served upon the Land Registrar, Kajiado County for their information and compliance.

LESIT, J.

JUDGE

DATED AT NAIROBI THIS JULY 22ND, 2020