



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.111 OF 2016

CYPRIAN MUGIIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 816 of 2016 of the Senior Resident Magistrate's Court at Githongo by Hon. C.A Mayamba – Senior Resident Magistrate)

JUDGMENT

CYPRIAN MUGIIRA, the appellant, was convicted for the offence of obtaining money by false pretences contrary to section 313 of the Penal Code and for the offence of forgery contrary to section 349 of the Penal Code.

The particulars of the offence were that on 20th March 2014 at Meru Town, Imenti North District of Meru County, jointly with others not before court with intent to defraud, obtained from **MATHEW GIKUNDA** Kshs. 250,000/= by falsely pretending that they were in a position to sell land parcel number **ABOTHUGUCHI/L-KAONGO/1194** measuring 0.81 Ha. to the said **MATHEW GIKUNDA** a fact they knew to be false. On the 27th February 2013 and at the same place, jointly with others not before court, with intent to defraud forged title deed number **ABOTHUGUCHI/L-KAONGO/1194** purporting it to be genuine and issued by the land Registrar Meru.

The appellant was fined Kshs. 250,000/= in default to serve two years imprisonment in count one and in count two he was fined 100,000/= in default to serve two years imprisonment. He now appeals against both conviction and sentence.

The appellant was in person. He raised three grounds of appeal as follows:

1. That the learned trial magistrate erred in law and in fact by convicting him while the trial suffered from procedural irregularities.
2. That the learned trial magistrate erred in law and in fact by convicting without sufficient evidence.
3. That the learned trial magistrate erred in law and in fact by failing to consider the appellant's defence.

The state opposed the appeal through Mr. Namiti, the learned counsel.

The facts of the prosecution case were briefly as follows:

In the month of February 2014, the complainant started a search for a parcel of land to purchase. He asked Andrew Ikiara to be on the lookout. Later he was informed that a parcel had been found. They went to an advocate's office to record and sign the sale agreement. The appellant posed as a caretaker and introduced himself as Alfred Mutua, the land parcel's caretaker. The appellant introduced one James Muriuki Kinyua as the owner of the land. The two were paid Kshs.250,000/= cash. It was later discovered that the title document was a forgery.

The appellant denied any involvement in the offences.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32**.

The contention by the appellant that the trial was riddled with irregularities is not true. I have perused the record and did not come across any. This ground lacks merit.

The complainant testified that the appellant held himself out as the caretaker of James Muriuki Kinyua who had been tasked to look for a buyer for land parcel number **ABOTHUGUCHI/L-KAONGO/1194**. When they first met, he said he was called Alfred Mutua. He took them to the land. When they went to draw an agreement and pay the money for the land in an advocate's office, he was present. When the appellant was arrested, he learnt that he was not Alfred Mutua but Cyprian Mugiira. This was the gist of the evidence of **Andrew Nthurima Kiara** (PW2). He said he was present throughout the whole process.

The investigating officer, **Japheth Musyimi** (PW3) produced documents that linked the appellant to both offences.

The ingredients of the offence of obtaining by false pretences contrary to section 313 of the Penal Code were enumerated in the case of **AMUGO vs. REPUBLIC HIGH COURT CRIMINAL APPEAL NO. 320 OF 1980** as follows:

The offence of obtaining by false pretences has seven possible ingredients which have to be proved beyond doubt before an accused person is convicted. They are (a) a false representation (b) which is made (c) by words or writing or conduct (d) of a matter of fact (e) either past or present (f) with knowledge of the falsehood or without belief that the presentation is true, and (g) the representation causing the giver to part with the thing obtained.

In the instant case these ingredients were proved to the required standards. The learned trial magistrate considered the defence proffered by the appellant but the evidence on record was overwhelming against the appellant.

The upshot of the foregoing analysis of evidence on record is that the appeal lacks merit. I accordingly dismiss it in its entirety.

DATED at MERU this 27th day of **April, 2017**

KIARIE WAWERU KIARIE

JUDGE