



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAHURURU**  
**CRIMINAL APPEAL NO.70 OF 2017**

**(Appeal Originating from Nyahururu CM's Court Cr.No.2213 of 2015 by: Hon. A.W. Mukenga – R.M.)**

FRANCIS GITUANJA.....APPELLANT

-V E R S U S-

REPUBLIC.....RESPONDENT

**J U D G M E N T**

**FRANCIS GITUANJA**, the appellant herein was charged with two offences: The first was *Forgery Contrary to Section 350(1)* of the Penal Code.

The particulars of the charge are that on 25/8/2015 at Nyahururu Township in Laikipia County, forged a Title Deed *No.Nyandarua/Ol Kalou Central/6261* purporting it to be the title deed of **Paul Waciuri Kiboi**.

The 2<sup>nd</sup> charge was that of *Uttering a False Document Contrary to Section 353* of the Penal Code.

The particulars of the charge are that on 25/8/2015 at Nyahururu Township in Laikipia County, knowingly and fraudulently uttered a Title Deed *No.Nyandarua/Ol Kalou Central/6261* purporting it to be the Title Deed of **Paul Waciuri Kiboi**.

He pleaded guilty to both charges and was sentenced to serve 7 years imprisonment on each count and the prison sentences were ordered to run concurrently.

The appellant is aggrieved by the sentence appeals against it. He contends that the court failed to take into account the fact that he was a first offender; that the court did not take his mitigation into account; that the court failed to consider sentencing him to probation and that the sentence is harsh in the circumstances.

In support of the above grounds, the appellant argued that he has a family, children whose mother passed away and is the only parent and prays for a non custodial sentence to enable him take care of his children. He therefore prays that the court do consider a non custodial sentence.

In opposing the appeal, **Mr. Mutembei** learned counsel for the State argued that the sentence meted on the appellant is lawful, that he was given a chance to mitigate and the same was considered before the sentence was handed down.

I have considered the grounds of appeal. After conviction, the prosecution informed the court that the

appellant was a first offender. The court allowed the appellant to mitigate and he prayed for pardon and that he would not repeat the offence. Before the sentence, the court said that it had considered the appellant's mitigation and the gravity of the offence and passed sentence.

The appellant faced the first charge under Section 350 of the Penal Code which attracts life imprisonment upon conviction. The second charge was under Section 353 of the Penal Code which also attracts the same sentence as under Section 350 of the Penal Code. The gravity of the offences are evident from the above provisions.

In my view, the court should have considered that the appellant pleaded guilty to the offences and therefore did not waste its time. The court did not take that into account. The court however considered appellant's mitigation and the gravity of the offence. The appellant never told the court that he was a single parent having lost his wife. Gauging from the sentence provided under Section 350 of the Penal Code, the offence which the appellant faced was a very serious one. Having taken into account all the above factors and especially that the appellant pleaded guilty and did not waste the court's time, I exercise my discretion, allow the appeal in part and reduce the sentence to 4 years imprisonment on each count and the sentences will run concurrently from the date he was sentenced on 4/9/2015. It is so ordered.

Right of appeal 14 days.

**Dated and Signed at NYAHURURU this 29<sup>th</sup> day of June, 2017.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Mr. Mutembei - prosecution counsel

Soi - Court Assistant

Appellant – present in person