

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL APPEAL NO 421 OF 2013

(Appeal from original Conviction and Sentence in Thika

CM Criminal Case No 4995 of 2009 – Ndeda PM)

JANE WAMBUI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, **Jane Wambui Mwangi**, was convicted after trial of **obtaining land registration by false pretenses** contrary to **section 320** of the **Penal Code**. It was alleged in the particulars of the offence that on 03/09/1992 at Kiambu Land Registrar's Office in Kiambu District of the Central Province, with intent to defraud, she obtained land registration for land parcel number RUIRU/MUGUTHA BLOCK 1/T 442, by falsely pretending that she was the lawful owner of the said land parcel, a fact she knew to be false. On 27/03/2012 she was sentenced to a fine of KShs 50,000/00 and in default to serve 10 months imprisonment. She paid the fine. She has appealed against both conviction and sentence.
2. There are 13 grounds of appeal in the petition dated 05/04/2012. They all challenge various findings of fact, important and not so important, by the trial court.
3. I have considered the submissions of the learned counsel for the Appellant, Mr. Kimani, and those of the learned counsel for the Respondent, Miss Keya. I have also read through the record of the trial court in order to evaluate the evidence and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however that I did not hear and see the witnesses as they testified, and I have given due allowance for that fact.
4. The totality of the evidence placed before the trial court by both the prosecution and the defence disclosed a serious dispute over ownership of a plot of land that originally belonged to a land-buying company in which both the Appellant and the complainant were shareholders. The problem appeared to have come about because the same plot of land was allocated to both by the land-buying company. Both the Appellant and the complainant had documents in regard to the plot of land (share certificates, ballot papers, etc.) that appeared genuine on their face.
5. This sorry state of affairs clearly came out in the testimonies of various witnesses, including witnesses who ordinarily would be expected to be, and actually were, neutral in the dispute (land registrar, company officials, etc.).
6. The dispute over ownership of the plot of land in question between the Appellant and the complainant should never have ended in criminal court, and a criminal court could not solve it at all; it could only exacerbate it! The dispute was purely civil in nature and could only be properly resolved in a civil court.
7. The misdemeanor charged was never proved against the Appellant beyond reasonable doubt. The conviction is entirely unsafe, and learned prosecution counsel properly did not support it.

8. In the result I will allow this appeal. The Appellant's conviction is quashed and the sentence imposed set aside. The fine, if paid, shall be refunded to her. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF JUNE 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 17TH DAY OF JUNE 2016