



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL APPEAL NO. 55 OF 2015**

**JERIOTH NJERI THEURI ..... 1<sup>st</sup> APPELLANT**

**LUCY WAGECI MWANGI ..... 2<sup>nd</sup> APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate’s Court Criminal Case No. 1101 of 2014 by Hon. T.W.CHERERE Chief Magistrate on 9<sup>th</sup> April 2015)*

**JUDGMENT**

1. **JERIOTH NJERI THEURI** 1<sup>st</sup> Appellant **LUCY WAGECI** 2<sup>nd</sup> Appellant were convicted on four counts. On the **first count** both appellants were charged with **offence of obtaining money by false pretences Contrary to Section 313 of the Penal Code Cap 63**. On the **second count** only the 1<sup>st</sup> appellant was charged with the **offence of personation Contrary to Section 382 (1) of Cap 63**. On the **third count** both appellants were charged with the **offence of forgery Contrary to Section 349 of Cap 63**. On the **fourth count** both appellants were charged with the **offence of altering false documents Contrary to Section 353 of Cap 63**. On conviction on all counts the trial court sentenced the appellants to 24 months imprisonment an each count all sentences running concurrently. They now file this appeal against sentence.

2. Under **Section 354 (3)(b)** of the Criminal Procedure Code the court while entertaining an appeal on sentence may increase or reduce the trial court’s sentence or alter the nature of such sentence. The exercise of that discretion is to have the principles set out in the case **MACHARIA VS REPUBLIC [2003]KLR 115** in mind, that:

*“The court does not alter a sentence on the mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence..... The court will also not ordinarily interfere with the discretion exercised by a trial Judge unless as was held in James Vs Republic [1950] EA 147. It is evident that the Judge has acted upon some wrong principles or overlooked some material facts.”*

Justice F. Tuiyot considered the principle which ought to guide a court when considering an appeal on sentence in the case **SUSAN ASIYO V REPUBLIC [2016] eKLR** and stated:-

*“This is an appeal against sentence only. The principles upon which an Appellate Court can interfere with the sentence of An Appeal Court are settled. They are:-*

- 1. If sentence is manifestly excessive in the circumstances of the case, or**
- 2. If Trial Court overlooked some material factor, or**
- 3. took into account, some wrong material or**
- 4. Acted on a wrong principle (see Bernard Kimani Gacheru vs Republic [2002] eKLR)”**

3. The prosecution’s evidence was that both appellants forged title deed over property **LAIKIPIA/NANYUKI/MARURA BLOCK 111/1539 (SWEET WATER)**, and fraudulently altered National identity card purporting it to be that of the registered owner of the aforestated property. Using those documents both appellants purported to sell the aforestated property to P W 4 Amin Mohamed Ali, for Ksh. 6.7. Million. In that regard they obtained 10% of that purchase price being Ksh. 670,000 by false pretences. The 1<sup>st</sup> appellant falsely represented herself as the owner of the property while the 2<sup>nd</sup> appellant represented herself as the daughter of the 1<sup>st</sup> appellant to Amin Mohamed Ali.

4. In my view bearing in mind that Amin Mohamed Ali lost Ksh. 6.7 million and in view of the gravity of the offence, which indeed is prevalent in the area of Nanyuki I agree with the submissions of Senior Principal Prosecution counsel that the trial court’s sentence was lenient. Considering the boundaries within which this court can consider altering the trial court’s sentence those boundaries do not present themselves within this case. On that ground both appellant’s appeal against sentence are dismissed.

**Dated and Delivered at Nanyuki this 19<sup>th</sup> DECEMBER 2016**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: .....

1<sup>st</sup> Appellant: Jerioth Njeri Theuri

2<sup>nd</sup> Appellant: Lucy Wageci

For state: .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**