



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 37 OF 2013

SAMUEL CHOMBA MUCHIRI APPELLANT

VERSUS

REPUBLICRESPONDENT

**(APPEAL ARISING FROM THE JUDGMENT OF THE PRINCIPAL MAGISTRATE'S COURT
AT GICHUGU (T.M. MWANGI – P.M)**

IN CRIMINAL CASE NO. 268 OF 2011 DELIVERED ON

19TH APRIL, 2012)

JUDGMENT

The appellant herein SAMUEL CHOMBA MUCHIRI was convicted by the Principal Magistrate at Gichugu Court Mr. T.M. Mwangi on 10th April 2012 on the following two counts:-

Count 1: Obtaining money by false pretences namely that on 13th May 2011 at Kerugoya township in Kirinyaga County within Central Province jointly with others not before Court and with intent to defraud obtained Ksh. 250,000/= from Muthoni Muue by falsely pretending that they were selling to her a parcel of land Ngariama/Ngiriambu/3908 measuring one acre which land was registered under the names of Bernard Muchiri Munyi (deceased).

Count 2: Uttering a false document contrary to Section 353 of the Penal Code the particulars being that on 13th May 2011 at Kerugoya town within Kirinyaga County Central Province jointly with others not before the Court, knowingly and fraudulently uttered a false document being a title deed of land parcel Ngariama/Ngiriambu/3908 measuring 0.40 Ha registered under the names of Bernard Muchiri Munyi (deceased) and entered into an agreement of sale with Muthoni Muue purporting to be the owner of the said parcel of land registered under the name of deceased Bernard Muchiri Munyi.

After hearing evidence from the twelve (12) prosecution witnesses and accused's defence, the trial Court found the appellant guilty on both counts and imposed a sentence of two (2) years imprisonment on count 1 and four and a half (4 ½) years imprisonment on count 2. It is against that conviction and sentence that he has filed this appeal.

I have considered his appeal as contained in the eight (8) paragraph petition filed herein on 3rd May 2012. The issues raised therein are basically that the trial magistrate erred in law and in fact by convicting him on evidence that was not corroborated, that the handwriting expert exonerated him from

the crime, that PW7 had a grudge against him, that his father whose documents he is alleged to have forged was a witness and testified that he still had his documents, that investigations were shoddy and finally that his defence was not considered.

As a first appellant Court, I am required to re-examine and evaluate the evidence and draw my own conclusion on whether or not the findings of the trial Court can be supported - **OKENO VS REPUBLIC 1972 E.A 32.**

Briefly, MUTHONI MUUE (PW10) who is the complainant herein wanted to purchase land and was taken to the appellant by MICHAEL MUCIRA (PW2) BONIFACE WAWERU (PW3) and WILSON MAGU (PW6). The appellant showed them the land that he said he was selling and a purchase price of Ksh. 250,000/= was agreed upon. They then went to the office of a lawyer Mr. IKAHU NGANGAH (PW10) where an agreement was executed and signed by both parties and their witnesses and the appellant was paid Ksh. 250,000/=. All this time the appellant held himself out as BERNARD MUCHIRI MUNYI the registered owner of the land being NGARIAMA/NGIRIAMBU/3908 who was infact long deceased. The following day, she learnt that the appellant was infact called CHOMBA MUCHIRI and the land belonged to his late father. The title deed (Exhibit 3) was subsequently confirmed to be fake by the District Land Registrar Kirinyaga MR. MUTHEE JULIUS KIAMA PW5. The appellant's defence was to deny all those allegations.

The state through Ms Kambanga supported both the conviction and sentence.

Having considered the evidence afresh as I am required to, I find that the appellant's conviction was on sound evidence. It is clear that the land NGARIAMA/NGIRIAMBU/3908 that he attempted to sell to the complainant belonged to one BERNARD MUCHIRI MUNYIRI (deceased) and the title deed was a forgery. The receipts of Ksh. 250,000/= from complainant is confirmed by other independent witnesses who were with her namely MICHAEL MUCIRA (PW2) and BONIFACE WAWERU (PW3) who were present during the transaction. There is also the agreement that he signed in the office of the lawyer MR. NGANGAH (PW10) in which he held himself out as BERNARD MUCHIRI MUNYIRI the registered owner of the land in issue. In cross-examination, the appellant stated during his defence that he had a sour relationship with MAGU (PW6) but said he had no sour relationship with the complainant. He said as follows during cross-examination by the prosecution during his sworn defence:

“I have a sour relationship with Magu. I have never seen the old woman who alleged that I made an agreement with her. I have no sour relationship with Muthoni Muue. She framed cases on me. She may have been used by people to pinch (sic) me”

It is clear from the testimony of the complainant that she had never met the appellant before and so there was really no reason why she would want to give false testimony against him or even why she would want to be used by others to do so. For my part, I find that her evidence was corroborated by other independent witnesses. There was sufficient evidence upon which the magistrate was entitled to find, as he did, that the appellant obtained Ksh. 250,000/= from the complainant by pretending that he was in a position to sell her land that infact belonged to a deceased person. Similarly, the title deed was found not to originate from the Lands office Kirinyaga which is the custodian of such documents and infact there was evidence from the Land Registrar that it was a forgery. The appellant's conviction was well founded. I dismiss the appeal against conviction.

On sentence, a charge of obtaining attracts a sentence of upto three (3) years and a charge of uttering attracts a similar sentence. So the sentence of 4 ½ years on count 2 was illegal and must be interfered with. I reduce it to two (2) year.

The appeal against conviction is accordingly dismissed but the sentence in count (2) two years from 4 ½ years. Both sentences to run concurrently as directed by the trial magistrate.

B.N.OLAO

JUDGE

17TH OCTOBER, 2013

17/10/2013

Coram

B.N. Olao – Judge

CC – Muriithi

Appellant – present

Mr. Omayo State Counsel present

COURT: Judgment delivered this 17th day of October, 2013 in open Court.

Mr. Omayo for state present

Appellant present

Mr. Muriithi Court clerk present

Right of appeal explained.

B.N. OLAO

JUDGE

17TH OCTOBER, 2013