



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

Criminal Appeal No. 188 Of 2011

MARY NJOKI MURIUKI ALIAS SARA KARIMI NELESON.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

From original conviction and sentence in Criminal Case No.537 of 2010 at the Chief Magistrate's Court at Embu by Hon. L.K. MUTAI PM on 24/10/2011

JUDGMENT

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON the Appellant was charged with the following offences:

COUNT 1:

OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON 2. JULIUS KARIITHI MWANIKI ALIAS J. KIBATHI

On the 2nd day of January, 2010 at Macharia Muraguri and Company Advocate's office in Embu township within Embu District within Eastern Province with intent to defraud obtained from Munyi John Nyaga cash Ksh.50,000/- by falsely pretending to be the owner of the land parcel Gaturi/Weru/5713 a fact you knew to be false.

COUNT 11

MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 357 (a) OF THE PENAL CODE.

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON

At an unknown date, time and place within the Republic of Kenya with intent to defraud made a certain document namely Kenya National Identity Card Number 002679 in the names of SARAH KARIMI NELESON, purporting it to be a genuine National Identity card issued by the Director of

National Registration.

COUNT III

MAKING A DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 357 (a) OF THE PENAL CODE.

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON:

At an unknown date, time and place within the republic of Kenya, with intent to defraud made a certain document namely Title Deed Number GATURI/WERU/5713 PURPORTING TO BE GENUINE Land Title Deed for the said SARAH KARIMI NELESON, prepared and issued by the Land Registrar Embu.

COUNT IV:

PARTICULARS:

FORGERY CONTRARY TO SECTION 350 OF THE PENAL CODE

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON

At an unknown date,time and place within the republic of Kenya, with intent to defraud, forged a certain signature of SARAH KARIMI NELESON on a forged National Identity Card number 002679 purporting to be the genuine signatures of the said SARAH KARIMI NELESON.

COUNT V:

FORGERY CONTRARY TO SECTION 350 OF THE PENAL CODE

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON:

At an unknown date, time and place within the Republic of Kenya, with intent to defraud, forged a certain signature of SARAH KARIMI NELESON on a forged National Identity Card Number 002679 purporting to be the genuine signatures of the said SARAH KARIMI NELESON.

COUNT VI:

UTTERING A FALSE DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 353 OF THE PENAL CODE.

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON:

On the 2nd day of January 2010 at Macharia Muraguri and Company Advocates Office in Embu Municipality within the Eastern Province, Knowingly and fraudulently uttered a certain document namely a land Title Deed of land parcel GATURI/WERU/5713 purporting it to be a genuine Title Deed issued by the Land Registrar Embu.

COUNT VII:

UTTERING A FALSE DOCUMENT WITHOUT AUTHORITY CONTRARY TO SECTION 353 OF THE PENAL CODE.

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON:

On the 2nd day of January, 2010 at Macharia Muraguri and Company Advocates in Embu Municipality of Embu District within the Eastern Province, knowingly and fraudulently uttered certain document namely a National Identity Card Number 002679 in the names of Sarah Karimi Neleson purporting to be a genuine identity card prepared and issued by the director of National Registration.

COUNT VIII:

FORGERY CONTRARY TO SECTION 350 OF THE PENAL CODE

PARTICULARS:

MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON

At an unknown date, time and place within the Republic of Kenya, intend to defraud, forged a certain signature of SARAH KARIMI NELESON on a forged National Identity Card No. 002679 purporting to be the genuine signatures of the said SARAH KARIMI NELESON.

COUNT IX:

ATTEMPTING TO OBTAIN MONEY BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE.

1. MARY NJOKI MURIUKI ALIAS SARAH KARIMI NELESON
2. JULIUS KARITHI MWANIKI ALIAS J. MBATHI

On the 2nd day of March, 2010 at Macharia Mwaniki and Company Advocate offices in Embu Township within the Eastern Province jointly attempted to obtain cash Ksh.320,000/- from MUNYI JOHN NYAGA by falsely pretending that you were in a position to sell a land parcel number GATURI/WERU/5713 measuring 0.61 Hectares, a fact you knew to be false.

She pleaded Not Guilty to all the counts and the matter proceeded to full hearing. She was finally convicted on 1st, 2nd, 3rd, 6th, 7th, and 9th counts. She was acquitted on 4th, 5th and 8th counts. She was then sentence as follows:

1st Count- 2 years imprisonment

9th Count- 2 years imprisonment

2nd, 3rd, 6th and 7th Counts- 5 years imprisonment on each Count.

There was an order that the sentences run concurrently. She filed this appeal raising several grounds. However when the Appeal came for hearing today (16/10/2013) the Appellant submitted that she was satisfied with the conviction and was abandoning her Appeal against+ the same. She was pursuing the Appeal on sentence only. She submitted further that the court should consider the sentence served as sufficient as her children are suffering. She indicated that her children are aged 6 years- 13 years. She also said she had learnt a lot while in prison and would wish to utilize those skills outside prison.

Ms Ingahizu the Learned State Counsel opposed the appeal saying the sentence she is challenging is

legal.

I have looked at the record and I am satisfied that the Appellant was convicted on sound evidence. Both the Appellant and her co-accused were convicted on 1st and 9th Counts where they by false pretences obtained Shs.50,000/- from the complainant. They were not successful in obtaining a further Shs.320,000/- the subject of the 9th Count. The other counts she was convicted on are uttering a false document and making a document without authority. All these acts landed her in prison for five (5) years.

I have considered her plea for the reduction of the sentence. The record also confirms that she was a 1st offender. Section 353 and Section 357 (a) of the Penal Code under which the appellant was charged in counts 2, 3, 6, and 7 states that:

“anyone convicted of those offences is LIABLE to imprisonment for seven (7) years”. In the case of **OPOYA -V- UGANDA 1967 EA 752** it was held that the words “shall be liable” on conviction to suffer death provide for a maximum sentence only. And therefore the courts have a discretion to impose sentences of death or of imprisonment. This therefore means the sentence of 7 years in each of these instances is a maximum sentence. The Learned Trial Magistrate gave the Appellant a sentence of 5 years imprisonment which I find too harsh considering that she was a 1st offender. She has completed her sentence on the 1st and 9th Counts and is continuing with the sentence on the other counts. I find that she has learnt her lesson and she should be given an opportunity to go and take care of her children who are minors.

I therefore allow her appeal on sentence. The sentence is reduced to the period already served. To that extent only does the appeal succeed. She will be released unless otherwise lawfully held under a separate warrant.

Delivered, signed and dated at Embu this 16th day of October 2013.

H. I. ONG'UDI

JUDGE

In the presence of:

Miss Ingahizu- State

Appellant- present

Mutero/Kirong- CC