

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Criminal Appeal 111 of 2008

**EVANSON MWANGI MWANIKI.....1ST APPELLANT
ANTHONY NDAMBIRI MWANIKI.....2ND APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

Evanson Mwangi Mwaniki and Anthony Ndambiri Mwaniki are the 2 appellants in this case. They were jointly charged before the Senior Resident Magistrate Kerugoya with the offence of obtaining land Registration by false pretences contrary to Section 320 of the Penal Code.

The particulars of the charge are that on 26/4/2005 at Kirinyaga Lands Office in Kerugoya Town jointly and with intent to defraud, obtained land registration of land parcel No. **NGARIAMA/NYANGENI/975** as joint owners with Pius Mukono Miraga.

They denied the charge and the matter proceeded to full hearing following which they were found guilty, convicted and each sentenced to serve 3 years imprisonment. Being dissatisfied with the said conviction and sentence, they filed separate appeals which we consolidated and heard together. The appeal is conceded by the state and I must say for good reason. To start with, the sentence imposed on the appellants was illegal. The sentence provided for under section 320 of the penal code is 1 year imprisonment. That sentence is therefore set aside.

On conviction, my view is that it is not necessary for me to analyse the evidence adduced before the trial court as is required of me as a first appellate court. I say so because only the evidence of PW8- Irene Kamau the Assistant Land Registrar then working at the Kirinyaga Land's office was relevant. She is the one who registered the land and transferred the same on 26/4/2005. She told the court that she received the transfer documents relating to the parcel of land in question on 26/4/2005. She told the court that the title was verified by the registration clerk and the documents were paid for proper registration. She therefore went ahead and made the entries in the register of title and later on issued the Title deed. Nobody appears to have contested her evidence. According to this witness, the registration was proper. It was done on 26/4/2005 yet the Sale Agreement in question which the complainant was relying on was dated 1/7/2005 which was 3 months after the transfer. The said agreement along with the evidence of the complainant and the other witnesses was therefore totally irrelevant as it related to a period after the alleged offence had already been committed. The question as to whether the complainant was paid any money on 1/7/2005 was neither here nor there. Even assuming for the sake of argument that the agreement was relevant clause 4 thereof acknowledged that the complainant had already received the entire purchase price. He signed it and he was thus bound by its contents.

Having considered the grounds of appeal, the evidence before the trial court and the concession by the learned counsel for the state, I am satisfied that the evidence before the trial court falls too short of the standard required to support a conviction. My finding is that the charge against the appellants was not proved.

This appeal has merit and the same therefore succeeds. The same is allowed and the conviction and sentence are hereby quashed. The appellants shall be set at liberty unless they are otherwise lawfully held.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 20th day of May 2010

In presence of: 1st Appellant and Mr. Mugo for Mr. Githinji for them and Mr. Wohoro for state.