



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Criminal Appeal 14 of 2007**

**DANIEL KARIMI WANJOHI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Daniel Karimi Wanjohi was charged with personating contrary to Section 382 (2) of the Penal Code. The particulars were that on 13/12/2002 at Kirinyaga Township with intent to defraud falsely represented himself to be Duncan Wanjohi Nyamu ID 3681166. There was also a count of forgery and obtaining money by false pretences. He set down 9 grounds of Appeal. Later he engaged an advocate who argued his grounds of appeal on his behalf. The complainant a retired civil servant was looking for a piece of land to purchase with his retirement benefits. He found a piece of land registered as Inoi/Thuita/591. The seller showed an original title and gave the complainant a copy. The proprietor was written as Duncan Wanjohi Nyamu. The seller of the land said he was Duncan Wanjohi Nyamu and added that his identification card was lost, he held a police abstract. The transaction was reduced into writing in the office of Mr. Ndana Advocate agreement produced as exhibit. The complainant withdrew from his bank account Shs.300,000/= which he gave to advocate Ndana who posted the money to Appellant. Land was to be subdivided and complainant was to meet survey fees Shs.32,000/= The Surveyor was a woman. She prepared mutation forms but when she asked the Appellant to produce the original title the Appellant refused. Later when complainant went to see Advocate Ndana, the advocate said the Appellant wanted to refund the money with interest. The money was not refunded. The complainant reported the matter to CID the complainant later came to know that the Appellant was David Karimi Wanjohi and the name of Duncan Wanjohi Nyamu was his father's name. The Appellant signed the sale agreement and mutation forms and transfer forms. The documents can not be registered since they were not in Appellants name. He received Shs.300,000/= from complainant. The Surveyor engaged to organize subdivision was Agnes Wambui Gacoki. She gave evidence of the instructions she received and the papers she was given and that she obtained consent of the Land Consent Board.

PW3 was a CID officer who received several documents. He found the Title Deed (MF1 1) was forged. He noticed accused was called Daniel Karimi Wanjohi not Duncan Wanjohi Nyamu as alleged on sale agreement. The father of the Appellant was Duncan Wanjohi Nyamu. After hearing the evidence of PW3 the Trial Magistrate on 5/9/2005 ordered that the disputed signature be referred to a document examiner. The next witness was the Advocate who prepared the sale agreement. He said the vendor (seller) was Duncan Wanjohi Nyamu and the land which was being sold was Inoi/Thuita/1559 and he confirmed Shs.300,000/- was paid to vendor/ Appellant. The complainant friend who introduced him to the Appellant gave evidence on the transaction.

On 11/1/2006 an advocate Githinji appeared for the accused/Appellant. On that day the prosecution witness was Duncan Wanjohi Nyamu who described himself as a Bishop with African Holy Ghost. He said he was the father of Appellant. He said he was the owner of Parcel No. Inoi/Thuita/591 and 371. He testified that he was not selling his lands and he had signed no papers to facilitate such a sale and that he did not give authority to Appellant to sell. His son must have done things behind his back he testified. In his defence the appellant denied the charges.

I have perused the prosecution evidence. The advocate who prepared the witnessed sale agreement gave evidence and confirmed that the appellant named as Duncan Wanjohi Nyamu did sign the sale agreement as vendor and received Shs.300,000/= From the complaint the complainant was the buyer. This evidence is supported by PW5 a friend of complainant who introduced the complainant to Daniel Karimi Wanjohi. Appellant met the complainant and he showed him the land. PW5 walked with the complainant and Appellant to the office of advocate Ndana where agreement was made and money exchanged. At that moment Mr. Ndana thought the vendor was Duncan Wanjohi Nyamu but PW5 sitting outside the advocate's office at the reception knew the Appellant was Daniel Karimi Wanjohi. The offence of obtaining money by false pretences was completed. Section 312 Penal Code defines the act of false pretence "Any representation made by words writing or conduct of a matter of fact either part or present which representation is false in fact and which the person making it knows to be false or does not believe to be true is a false pretence"

I have perused the record and the Judgment of the Trial Magistrate and I am satisfied the conviction was reached on sound evidence. It appears the Trial Magistrate had ordered the disputed signature be examined by document examiner but it was for the prosecution to take such action. However it is clear there was no disputed signature the documents were signed before advocate and that was sufficient evidence. The evidence of the father Bishop Duncan Wanjohi Nyamu is clear and uncontroverted. The Appellant presented himself to the complainant and to the Advocate Ndana as his father Duncan Wanjohi Nyamu. He obtained money Shs.300,000/= by representing that he had land to sell.

In the circumstances the offences were proved. I find no reason to interfere with the conviction or sentence which is in accordance with the law.

The appeal is dismissed.

Dated this 18<sup>th</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**18/2/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Appellant present**

**Mr. Kimathi for State**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**