

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal 102 of 2005

JANE WANGECHI NGIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

REASONS FOR JUDGMENT ON APPEAL MADE ON 15/12/2006

These two appeals were consolidated having arisen out of the same trial. Both appellants were represented by one Counsel Mr. Munene who argued the appeal on their behalf.

The appellants were jointly charged with the main count of conspiracy to defraud contrary to section 317 of Penal Code and count II of obtaining Land Registration by false pretences contrary to Section 320 of the Penal Code.

After the Counsel for the Appellants addressed the court the state Counsel Mr. Kimathi addressed the court and indicated that he was not supporting the conviction and sentence. He was conceding the appeal. His argument was that the evidence of PW1 shows that the parties attended the Land Board and all forms and necessary documents were completed and the true position was that the transfer was to the first appellant not the second appellant and that the proceedings of the Land Control Board was not produced as evidence. Further that the evidence of PW4 an independent witness shows that there was a sale agreement for the transaction and this evidence supports the defence and sworn evidence.

Furthermore the Investigating Officer should not have produced evidence of documents not made by him without calling the maker. And no evidence was called to prove that the registration of documents was obtained by false pretences.

I have perused the record; I find no evidence of conspiracy to defraud. There was again no evidence of obtaining Land Registration by false pretences. What is very clear here is that the transaction was of a Civil nature. No Criminal intention is disclosed. In criminal cases the standard of proof is of high standard **“beyond reasonable doubt while in civil cases is on a balance off probability”** The story of the complainant that the issue of transferring land was taken to the Land Control Board and she was present when her father consented to the transaction and then the complainant signed all the documents necessary so did her father.

In these circumstances the evidence can not sustain a conviction. I am of the same with the State Counsel. I therefore allow the appeal on these grounds and on the ground that the state concedes this appeal.

Dated this 22nd January 2007.

J. N. KHAMINWA

JUDGE

22/1/2007

Khaminwa – Judge

Njue – Court Clerk

Mr. Okwaro HB

J. N. KHAMINWA

JUDGE