



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

AT KAKAMEGA
CRIMINAL APPEAL 33B OF 2004

(Appeal against the acquittal of the Respondent in Chief Magistrate's Court

Criminal Case No.229 of 2002 delivered on 16th September, 2003 (J. THUITA, PM)

REPUBLIC.....APPELLANT

V E R S U S

GREGORY MACHANJA WAMERE.....RESPONDENT

JUDGEMENT

Gregory Machanja Wamere, the Respondent, was acquitted by the Principal Magistrate, Jenifer Thuita, in Kakamega Chief Magistrate Criminal Case No. 229 of 2002 of three offences under the Penal Code with which he had been charged, to wit Forgery Contrary to section 349, Forgery of stamp contrary to Section 352(a) and obtaining land registration by false pretences contrary to section 320.

The particulars of the three counts were as follows:-

Particulars of Count I:

on or about 7-2-2001 at Mumias township, Butere/ Mumias District of Western Province with others not before court with intend to defraud forged a certain document namely, Letter of Consent in respect of land parcel E/Wanga?Eluche/97 purporting it to be a genuine document signed by Kassim Farrah, D.O.I Mumias Division for transfer of the said land to himself from one Salim Chitechi.

Particulars of Count II:

on or about 7-2-2001 at Mumias township, Butere/ Mumias District of Western Province with others not before court with intend to defraud, forged the official rubber stamp for Chairman land Control Board Mumias on letter of Consent for transfer of land parcel E/Wanga/Eluche/97 to himself from one Salim Chitechi.

Particulars of Count III:

On or about 21-2-2001 at Registrar of Lands office Kakamega, in Kakamega District of Western Province willfully procured for himself registration of land parcel E/Wanga/Eluche/97 by falsely pretending that it was genuinely transferred to him by one Salim Chitechi and Consent given by the Chairman Mumias Land Control Board.

The State, aggrieved by the trial court's decision, filed appeal against the acquittal of the Respondent and proffered two grounds of appeal in which it contended,

(1) that the acquittal was against the weight of evidence and;

(2) that the trial magistrate erred in law in concluding that the Prosecution did not prove its case beyond any reasonable doubt in all the three counts.

These two grounds were argued as one by Mr. Daniel Karuri, the learned State Counsel. In a nutshell, Mr. Karuri contended that the trial magistrate erred in not finding (1) that the letter of Consent was forged and (2) that the stamp was a forgery and (3) that the Respondent obtained registration of the land in question by false pretences. Mr. Karuri placed emphasis on the fact that the complainant was according to him a person entitled to inherit the land in question.

In her Judgement, the trial magistrate summarized the facts as follows:

“PW1 claimed that his father was the registered proprietor of land parcel E.Wanga/Eluche/97 having bought the land from one Aura Matete. PW1 claimed that after his father died in 2000 subsequently in February 2001 he discovered that the land had been transferred to the accused irregularly. The prosecution claims therefore that in order to obtain the land the accused forged a letter of consent and purported it had been signed by one Kassim Farrah, DO I, Mumias division. The prosecution alleged further the accused had forged official rubber stamp of Chairman, Mumias Land Control Board, on the letter of Consent for transfer of the land in issue.”

“The prosecution alleged further that after forging the letter of consent and stamp, the accused obtained through false pretences land parcel E.Wanga/Eluche/97 by falsely pretending it had been genuinely transferred to him by Salim Chitechi.”

“In his defence the accused claimed he bought the parcel of land from Salim Chitechi on 12.2.2001. The information from lands office at the time revealed that land was registered in the names of Salim Chitechi. The accused produced an agreement D.Ex.1 and D.Ex.2. The accused also produced asD.Ex.4 a receipt for Kshs.125/= from the Land Control Board. Accused in short maintained he bought the land lawfully from Salim Chitechi and he obtained all the necessary documents.”

I have carefully perused the evidence adduced in the trial court. There was no evidence to prove that the Respondent was in any way connected with the alleged forgery on the Letter of Consent. The D.O. (PW3) said in evidence he had not signed it. But there was evidence that in PW3's office was another officer by the name of Juma who could have signed and who was treated as a suspect but was never charged although he had been arrested and held in custody. The trial magistrate was right in her finding that there was no evidence to link the Respondent with the forgery when account is taken of the fact that the Respondent bought the land from the registered owner, Salim Chitechi (PW6) who testified as prosecution witness. In his evidence, PW6 stated that the land belonged to his father, one Aura Matete and that the said land passed to him when his father died. He was registered as the proprietor and had a title deed to it. He sold it to the Respondent. After analyzing the evidence in this regard, the trial magistrate found that the Respondent had bought the parcel of land from Salim Chitechi on 12.2.2001 and was not privy to the unlawful acts alleged in any of the three counts. The complainant, PW1, had no title to the land in question, nor did his late father. He claimed that the land was his, but he had no title to it. He claimed that his late father had bought it from one Aura Matete Makokha, but he never got title to it nor did he enforce the contract of sale with a view to obtain redress by way of specific performance.

According to the evidence of prosecution witness No. 6, Salim Chitechi Makokha, the Respondent paid Shs.150,000/= for the land. Why would the Respondent forge documents of land that he was buying from the registered proprietor for a consideration at open market value?

There is not a scintilla of evidence to show that the Respondent was guilty of any of the three counts. The

trial magistrate was quite right to acquit the Respondent. The Appeal has no merit and I dismiss it accordingly.

Dated at Kakamega this 17th day of June, 2005.

G. B. M. KARIUKI

J U D G E