



**Njeru & another v Republic (Criminal Appeal E110 of 2023)
[2025] KEHC 2237 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E110 OF 2023
LW GITARI, J
FEBRUARY 7, 2025**

BETWEEN

DUNCAN MWIRIGI NJERU 1ST APPELLANT

FESTUS MURUTANI NJERU 2ND APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appeal arises from the proceedings in The Senior Resident Magistrate’s Court at Tigania Criminal Case No.367/2020. In the case the appellants were charged with obtaining Registration by false pretences contrary to Section 320 of the *Penal Code*. The appellants denied the charge and after a full trial they were found guilty convicted and ordered to pay a fine of Ksh.80,000 or in default to serve nine months imprisonment.
2. The appellants were dissatisfied with both the conviction and sentence and filed this appeal based on eleven (X1) grounds on the Petition of Appeal. They urged the court to quashed the conviction, set aside the sentence and set them at liberty.
3. The appellants grounds of appeal are as follows:-
 - i. The learned trial magistrate erred in law and fact by convicting and sentencing the Appellants on a charge that was not supported by an tangible evidence.
 - ii. The learned trial magistrate erred in law and fact by relying on the unsupported and speculative evidence of PW1, PW2, PW3 and PW4 in convicting and sentencing the petitioners.
 - iii. The learned trial magistrate erred in law and fact in miscomprehending the adjudication processes, customs and usages prior to the conclusion and ascertainment of rights to land.



- iv. The mitigation factors of the appellant was not considered by the trial Magistrate.
- v. The trial magistrate ignored glaring contradictions in the prosecutions case.
- vi. The judgment of the court delivered on 13th day of July, 2023 did not take into consideration the petitioners defence, the petitioner was fundamentally prejudiced.
- vii. That the honourable magistrate erred in la and fact by imposing a harsh sentence.
- viii. That the Honourable magistrate erred in law and fact by imposing a harsh sentence.
- ix. That the Honourable magistrate erred in law and fact by disregarding the evidence of the appellant.
- x. That the Honourable magistrate erred in law and fact by failing to consider/summon the persons who signed the green card and title deed for MERU/MBEU 1/7870 were not called as witnesses.
- xi. That Honourable court erred in law and fact by failing to find that the prosecution failed to discharge its duty to prove their case beyond reasonable doubt thus arriving at an impugned Judgment.

The appellants however collapsed these grounds into three in their submission.

- 4. The respondent opposed the appeal and prayed that it be dismissed and the conviction and sentence be upheld.

The Prosecution's Case:

- 5. The PW1 Priscilla Mwirigi Njogu testified that she met one Kirimi Ileri who is her cousin at a cyber Café where she had gone to photocopy permit and death certificate. The said Kirimi promised to keep the documents in an envelope but instead he disappeared. Later she learnt that the appellants had been registered as owners of Land Parcel No.7870. According to PW1 the appellants were sons of her cousin one Diana Kageni Njeru. PW1 testified that the land had been registered in the name of her mother Sabina Ntue Mwirichia and she produced the adjudication record of the land was registered in name of her mother who passed away in 2013. She testified that the title deed for the plot was fake. On being cross-examined she testified that she had been given parcel No.7871 and her mother owned parcel No. 7870 which she gave her book showing the number and she was her only child.
- 6. PW2 Jotham Nkonge testified that in 2016 she went with PW1 to check the position of their records and they found they were okay. Later on 16/10/2017 when they went back they found that John Phares Njeru had registered a caution of the Parcel of land belonging to Sabina. That John Phares Meru was his brother and that when he went to Maua to check he established that the land had been registered in the names of the appellant who are grandsons Phares Njeru. According to PW2 Sabina Ntue Mwirichia who is PW'1 mother is his sister. PW2 testified that Sabina passed away in 2013 and was the owner of Parcel No.7870 having received it from her husband Jacob Mwirichia. He noted that the title deed and the green card bears the names of the appellants.
- 7. In cross-examination PW2 stated that PW1 was entitled to inherit her mother's property, that is parcel No.7870 which was registered in the name of Sabina Ntue Mwirichia. He further testified that he could not tell how the appellants were registered or how the transfers were done.
- 8. PW3 Richard Kemboi is an officer from the District Land Adjudication Office at Tigania West. He testified that from the records held in Demarcation book for Mbeu-1-Adjudicatin Section Parcel



No.7870 is in the names of Sabina Ntue Mwirichia who is the owner. He identified the original booklet which is issued to the owners at the Demarcation stage MF1-1. He also produced the register for Land Parcel No.7870 in the names of Sabina Ntue Mwirichia which has no cancellation. He produced the booklet and the register in court as exhibit 2 and six respectively. PW2 produced adjudication Register that has a cancellation on the name of Sabina Ntue Mwirichia and replaced with Festus Murutani and Duncan Mwirigi dated 16/10/2017. He told the court that such a cancellation could only be done with an objection. He stated that there was an objection No.4201 by Festus. He stated that there was no court order or a succession cause. He produced Adjudication record as exhibit 3, title deed issued to Duncan Mwirigi Njeru on 16/10/2017, exhibits 5, Green Card exhibit 4.

He told the court that the objection was not heard. In cross-examination he told the court that the right procedure was not followed in issuing the title deed to the appellants. He further told the court that the appellants had two demarcation books which were not valid.

9. PW4 No.13396 Josphat Mutsimi was the D.C.I Tigania West. He testified that on 6/9/2018 he received a complaint from Priscilla Mwirigi Njogu who reported that her late mother's parcel of land N. Mbeu 7870 had been secretly transferred in the names of Duncan Mwirigi Njeru and Festus Murutani Njeru. She gave her a death certificate and booklet in the name of Sabina Ntue showing that the land was registered in her name. He went to the Land Adjudication Office where he was shown adjudication records and confirmed that the land belonged to Sabina Ntue. He then proceeded to the Lands office and found that a title deed in the names of the appellants had been issued. He identified the green card and the title deed which were produced as exhibits by PW3; exhibit 4 & 5. He told the court that he did not come across any document showing that there was a Succession Cause, in the estate of Sabina Ntue nor was there a court order authorizing the transfer. That there was an agreement or transfer by Sabina Ntue transferring the land to the appellants. He learnt from the complainant that she was in Cyber Café when the death certificate and burial permit went missing and she believed they were used to transfer the land.

Defence Case:

10. The 1st appellant testified that he was raised by Sabina Ntue in her home and she gave him and the 2nd appellant the plot No.7870 during her lifetime. He testified that Sabina Ntue was her grandmother. The second appellant testified that it is Sabina Ntue who went to Ururu and had the land transferred in their names when they were still young. In cross-examination she testified that he admitted that the deceased died in 2013 and they (appellants) were registered in 2017 and no succession was done.
11. DW3 is the appellants father. He told the court that Sabina Gladys Ntue called him before he died and told him he had given the land parcel No.7870 to the appellants. He was given a book to follow up at the lands office and using the book they were given title deeds. Later in 2017 the appellants were given their title deeds, he admitted that no succession was done and Sabina Gladys Ntue did not leave a will.

The Appeal:

12. The appeal was canvassed by way of written submissions.



Appellants Submissions:

That the learned trial magistrate erred in law in miscomprehending the adjudication process, customs and usages prior to the conclusion and ascertainment of rights to land.

13. He submits that the PW3 explained that there has to be an objection, an objection is raised and that the 2nd appellant had raised an objection and it was heard. This is not correct as the PW3 stated that the objection was not heard).

That the honourable court erred in law and in fact by failing to consider that the ingredients of the offence of obtaining registration by false pretences had not been proved to the required standard, and failed to find that the prosecution had not proved its case beyond any reasonable doubts.

14. It is submitted that the ingredients of the offence are that there must be a representation on matters of fact about the past or present, that the representation must be false and it must have been made with an intent to defraud someone of his property. That it must have been acted upon to the disadvantage of the complainant. That the prosecution must prove these ingredients in order to succeed in the case of obtaining registration by false pretences. That the prosecution did not prove how the land was transferred as no transfer of documents and the minutes of Adjudication Committee to show who signed them.

That the learned magistrate erred in law and facts by failing to summon the one who signed the green card and the title deed for Meru Mbeu/7870.

15. It is submitted that the search and title deed is signed by the Land Registrar of the Respective Registry. That no evidence was tendered to prove how the entry removing the land from the deceased to the appellants. That the Land Registrar who was the custodian of the registration documents was not called to testify and shed light on why the land moved from the deceased to the appellants. That the failure to call the Land Registrar denied the court that crucial witness who should have shed light on what had transpired.

He submits that the appeal has merits.

Respondents Submissions:

16. It is submitted that the appellants were charged with obtaining registration by false pretence. She relies on Hashim - Republic Criminal Appeal No.E050/2021 (2023) KEHC 2662 (KLR) 8 December 2023 (Judgment) where the court noted the well settled ingredients of the offence of pretence.

which are-

- a. there must be a representation on matters of fact about the past or present.
- b. That presentation must be false and must have been made with intent to defraud someone of his property
- c. It must have been acted upon to the disadvantage of the complainant.

17. It is submitted that the respondent established the above ingredients beyond any reasonable doubts. That the transaction was done three years after the death of the deceased and that they availed evidence to show how the land moved from the deceased to the appellants. That there was no court order or succession proceedings in the estate of the late Sabina Ntue Mwirichia. That area where the land lies



is an adjudication area and he confirmed that the land belongs to Sabina Ntue Mwirichia. That they proved that the land belonged to Sabina Ntue Mwirichia as evidence by the registration book exhibit-2. That on the issue of the objection raised which by the 2nd appellant it buttresses the prosecution's case that the process was flawed and marred with irregularities and the appellant admitted that he was aware that Sabina was deceased. That the objection No.4201 shows that they were willfully presenting false facts with an aim of having the title cancelled.

18. She relies on the case of *Mary Wangechi Ndoria –v- Republic* (2018) eKLR where it was held;

“25. The genesis of the first pretence can be traced back to when the deceased resented the non- existent title (PEXh. 2a) to PW1 purporting it to be genuine title; and for over 30 years PW1 actually believed that they all had a title to the land; 26. The second phase of the pretence was when the appellants approached PW3 the initial owner; he testified that the deceased appellant was a person known to him because he had sole he land to ‘the Mzungu,’ his wife and Ndoria. (Ndoria being the deceased appellant): his evidence was that the deceased appellant approached him and informed him that the “mzungu” had been disposed and told him to sign the documents to enable them transfer the land’ PW3 stated that he trusted the deceased appellant and he had no reason to doubt him having dealt with him previously n he first transaction; this testimony of PW3 which was not controverted is sufficient proof that the information of the dispossession of the ‘mzungu’ emanated from the appellants; that is how the appellants were able to induce him to transfer his whole interest in the subject property to them: 27. The appellants themselves knew this information relayed to PW3 on the ‘Mzungus’ dispossession was false because thy both knew that PW1 was still alive and was still a joint owner and was further still fully interested in her and the late husband’s share in the property; these facts were always in the appellants knowledge; they even knew that she had re-married PW2 the demise of her husband and that she was I constant communication with the appellants with respect to the property.”

19. Similarly in *Evanson Mwangi Kihumba –v- Republic* [2022] eKLR the Court in Embu held that the appeal was devoid of merit, the court observed that:

“46. From the evidence on record, and especially that of PW1, PW2, PW3, PW4 & PW5. Land Parcel No. Gaturi/Weru/377 belongs to the deceased Mbui Kobuthi. This evidence was confirmed by PW6 who testified that indeed the said Mbui Kobuthi was the first registered owner of the aforesaid land and was issued with a title deed in the year 1965 which entry is reflected as No.2 on 1/9/1965. That according to the records held in Embu ands Office, the land was later transferred to Paul Njeru Kamara who later transferred it to Evanson Mwangi Kihumba, the appellant herein. 47. From the evidence of PW7, it is clear that the transfer of the land from the original registered owner Nyaga Kobuthi to Pau Njeru to Kamara was fraudulent and not genuine in that the deceased Nyaga Kobuthi did not sign the transfer of land forms. PW7 also confirmed that the transfer documents were also not genuine as they were made by different authors. 48. The evidence of PW8 also confirmed that the impressions on the transfer forms and that on the change of names declaration documents were not genuine as they were made by a different



person yet the said documents ought to have been made by the same person who is Nyaga Kobuthi. 49. It is therefore clear to me that the deceased Nyaga Kobuthi neither sold nor transferred the land to Paul Kamara or any other person for that matter and any purported transfer was fraudulent. It also follows that all the other subject transfers were also fraudulent-.....53. The appellant herein procured registration of the title document into his name by false pretences. The evidence adduced by PW7 confirms that the transfer documents following which the appellant obtained he title in his name were not genuine.”

Analysis and Determination:

20. I have considered the proceedings before he learned magistrate, the grounds of appeal and the submissions. I find that the issue for determination is-

Whether the prosecution proved the charge against the appellants beyond any reasonable doubts

21. This is a 1st appeal and this court is enjoined to revisit the evidence before the trial court afresh, evaluate, analyse it and come up with its own independent finding. The court is however supposed to leave room for the fact that it did not have an opportunity to see and hear the witnesses when they testified and leave room for that. See Court of Appeal in Okeno –v- Republic (1972) E.A 32 and Mark Oruri Mose Republic 2013 eKLR.
22. The appellants were charged with obtaining registration by false pretences contrary to Section 320 of the [Penal Code](#) which provides as follows:
- Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.”
23. On the other hand, false pretence is defined under Section 312 of the [Penal Code](#) which provides as follows:-
- “Any representation, made by words, writing or conduct, of a matter of fact, either past 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.”
24. The ingredients of the offence have been well articulated by the parties herein. These are that there must be a representation on matters of fact about the fact or present, that representation must be false and it must have been made with intent to defraud a person of his property. These are the ingredients that the prosecution must prove in order to secure a conviction on a charge of obtaining registration by false pretences.
25. The appellants are alleged to have obtained registration of Land Parcel No. Mbeu 1/7870 by false pretences. This fact is not indispute as the appellants admitted that the and was registered in their names as thy were given the land by Sabina Gladys Ntue. The PW3 testified that the 2nd appellant had raised an objection No. 4201. According to PW3 the District Land Adjudication Officer the objection was not heard. According to PW3 the objection was done on 16/10/2017 and the same date the name Sabina Ntue Mwirichia was cancelled and the names of the appellant were inserted. It was not possible that the objection could be filed heard, then determined the same day. The objection was not heard as testified by PW3. The filing of the objection was fraudulent as the registered owner was deceased,



a fact which as within the knowledge of the appellants. The appellants in their defence claimed that the ceased had given them the land.

26. Under Section 26 of the *Land Consolidation Act* (Cap 283 Laws of Kenya) an objection is raised by a person named in or affected by Adjudication Register who considers such register to be inaccurate or incomplete in any respect or aggrieved by allocation of land as entered in the adjudication register and may raise objection within 60 days after the completion of the register under Section 25. The appellant was named in the said adjudication register nor was he affected. The fact that the deceased died in 2013 and she was validly registered confirms that the objection which the appellant had no capacity to make in the first place was time barred. The objection was null and void and fraudulent ab intio. PW3 confirmed that at the demarcation which was the original booklet was in the name of Sabina Ntue Mwirichia. It means that at the time of her death, the Land Parcel was registered in her name and could only be transferred through a Succession Cause.
27. The green card which was produced as exhibits shows that the registration were done in the year 2016 three years after the deceased died. This is not in dispute and failure to call the Land Registrar was not fatal as the fact was not denied and the appellants maintained that they were the lawful owners.
28. I find that the appellants relied on two demarcation booklets which were not valid as stated by PW3 that he was not aware of the cancellation from the appellants to Sabina and that the appellants did not follow the right procedure as the booklets which they had were not certified with an official stamp.
29. It is clear beyond peradventure that the appellants procured the registration of land belonging to a deceased person by pretending that the land belonged to them, a representation that was false with intent to defraud the owner of her property and to her disadvantage. The prosecution did prove all the ingredients of the charge of obtaining registration by false pretences beyond any reasonable doubts.

Conclusion:

30. I find that the appeal is without merits and is dismissed.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF FEBRUARY 2025.

L.W. GITARI

JUDGE

