



**Republic v Kibui (Criminal Appeal E009 of 2024)
[2025] KEHC 2685 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2685 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL APPEAL E009 OF 2024
MA ODERO, J
MARCH 7, 2025
(FROM THE ORIGINAL CR NO. 809 OF 2014 OF
THE CMS MAGISTRATE’S COURT AT NYERI)**

BETWEEN

REPUBLIC APPELLANT

AND

SAMUEL MAINA KIBUI RESPONDENT

JUDGMENT

1. Before this Court for determination is the Petition of Appeal dated 14th March 2024 by which the Republic (Appellant) prays that the acquittal of the Respondent be set aside and be substituted with a conviction and an appropriate sentence.
2. The Respondent Samuel Maina Kibui opposed the appeal. The appeal was canvassed by way of written submissions, the Appellant filed the written submissions dated 20th June, 2024 whilst the Respondent relied upon his written submissions dated 4th October 2024.

Background

3. The Respondent in this matter had been charged in the Chief Magistrates Court in Nyeri with two offences as follows:-

Count No. 1

Forgery contrary to section 345 as read with Section 349 of the Penal Code



4. The particulars of the charge were that

“On or about the 1st day of October 2009 at Nyeri Township within Nyeri County within the Republic of Kenya, jointly with others not before the court, with intent to defraud, forged a certain document namely letter of consent for transfer of land parcel Aguthi/Gaki/1887, purporting it to be a genuine letter of consent issued by the chairman Tetu East Land Control Board.”

Count No. 2 - Obtaining Land Registration by false pretences Contrary To Section 320 of the Penal Code

5. The particulars of the charge were that:-

“On the 13th day of May 2010 at Nyeri Lands Office in Nyeri County within the Republic of Kenya willfully procured for himself land registration for Land Parcel Aguthi/gaki/1887 by falsely pretending that he had consent of transfer from James Justus Wanyaga Gathaka, the rightful owner of the said land parcel, a fact he knew to be false.”

6. This matter has had a long and chequered history in the lower Court and the trial went through the hands of several magistrates. At one time the original file went missing from the court registry and had to be reconstructed.

7. The facts of the case were as follows. The complainant James Wanyaga told the court that he was at one time the Mayor of Nyeri Town. That sometime in the year 2010 the complainant required funds to construct a project in Tetu. He met a friend called Simon Kamotho Ngatia (PW2) who offered to take the complainant to a ‘shylock’ who would be able to advance him the required funds.

8. The complainant and PW2 went to meet the Respondent. The Respondent offered to advance to the complainant the sum of Kshs. 100,000 at an interest of 50% on condition that the complainant gave security for the loan.

9. The complainant tendered as security, the title deed for his property known as LR No. Aguthi/Gaki/1887, which Title Deed the complainant left in the hands of the Respondent.

10. The complainant stated that he had made several attempts to refund the Respondent his money but the Respondent kept avoiding him and thus he was unable to make the repayment. Later on the mother of the complainant asked him whether he had sold his land to the Respondent. She showed the complainant a copy of a Title Deed indicating that the land had been transferred into the Respondents name.

11. The complainant reported the matter to the Directorate of Criminal Investigations (DCIO). Police commenced investigations into the matter.

12. PW7 Corporal Henry Kyalo was the investigating officer attached to Nyeri DCIO Office. The investigating Officer told the court that his investigations revealed that the Respondent had this Plot 1887 transferred into his own name. The officer recovered an application for consent, copy of Green card, consent from the Tetu East Land Control Board as well as a registration book form the lands office. He collected known and sample handwritings from both the complainant and from PW4 and proceeded further to interview the relevant witnesses.

13. PW4 Mwebia Ali who was at the material time the District Officer 1 at Mathira West Sub-County, was the chairman of the Land Control Board Tetu Sub-County. He categorically stated that he did not sign



- the consent to transfer the land. He stated that the signature on the consent was not his. PW4 further denied that either the complainant or the Respondent appeared before the Board on October 2009 as was alleged by the Respondent. That the names of the two did not appear in the booking Register.
14. PW5 Samuel Nderitu Ndirangu was at the time the land Registrar in Nyeri. He told the court that police brought to him some documents for certification. That he proceeded to obtain the Original copies of the following documents:-
 - i. Application for consent of land control board.
 - ii. Green Card for Aguthi/Gaki/1887
 - iii. Consent for transfer of land from complainant to the Respondent.
 - iv. Stamp.
 - v. Receipt No. 0805802
 - vi. Transfer Form.
 15. Although PW5 stated that at the time of certifying the documents he had with him the Original Copies for comparison, when the police later requested to be furnished with the original documents, they were all found to be missing despite having been kept under lock and key in the lands office.
 16. According to PW5 all the copies of the documents produced in court were genuine and he himself certified them as original documents originating from the Nyeri Lands Office.
 17. PW6 Jacob Oduor is a Forensic Examiner who at the time was working with the CID Forensic Department as a Document Examiner. PW6 told the court he carried out an examination of the known and sample handwritings which were forwarded to him by the Investigating Officer. The witness then compiled his Report dated which he produced as an exhibit PExh 18.
 18. Following the closure of the prosecution case the learned trial magistrate on 24th August 2023 delivered a ruling in which he found that the Respondent had a case to answer. The Respondent opted to give an unsworn defence and did not call any witnesses.
 19. In his defence the Respondent confirmed that the complainant was brought and introduced to him by one 'Maina' (PW2). That the complainant and his mother sought for financial help to enable the complainant carry out a construction project. The Respondent agreed to advance the complainant some money on condition that the complainant provide some security for the debt.
 20. The Respondent went on to state that he did advance to the complainant the sum of Kshs. 100,000 against the security offered by the complainant which was the Title Deed for the parcel of land known as L.R No. Aguthi/Gaki/1887. This they all went to view the land together to confirm its existence and the local chief Joseph Mureithi Mwaniki (PW3) confirmed to the Respondent that the land indeed belonged to complainant.
 21. According to the Respondent the complainant later came to the office with documents including an application for Land Control Board Consent which the Respondent signed. The complainant then requested that the Respondent provide a copy of his National ID card, which the Respondent provided.
 22. That the complainant went and made a booking and informed the Respondent that the Board would meet on 1st October 2009. That the complainant and the Respondent attended the Land Control Board meeting together, the Board gave consent and the complainant voluntarily transferred the land



to the Respondent. This according to the Respondent is how the Title Deed was transferred to his name.

23. Later police came to the Respondent enquiring how he had obtained the land in question. The Respondent categorically denied having forged any documents.
24. On 7th March 2023 the Learned trial Magistrate delivered his judgement in which he acquitted the Respondent of both charges. Being aggrieved by this decision the Republic through the office of Director of Public Prosecutions (ODPP) filed this Petition of Appeal dated 14th March 2024. The appeal was premised upon the following grounds:-

- “(1) The Learned trial magistrate erred in law and fact in holding that the prosecution had not proved beyond reasonable doubt that the Respondent had forged the letter of consent for Title Number Aguthi/Gaki/1887 and obtained registration of the same by false pretences. A miscarriage of justice was thereby occasioned.
- (2) The Learned trial magistrate erred in law and fact in disregarding the evidence of the Assistant County Commissioner who denied signing the letter of consent and the document examiner who examined the application for Land Control Board Consent, the transfer and the letter of consent and found that the complainant and the Assistant County Commissioner had not signed the said documents. A miscarriage of justice was thereby occasioned.
- (3) The Learned trial magistrate failed to consider that there was overwhelming evidence proving the charges facing the Respondent.
- (4) In so far as the complainant merely borrowed money with no intention of transferring the land to the Respondent, the learned trial magistrate erred in law and fact in not holding that the Respondent had forged the documents and obtained transfer of the land by false pretences. A miscarriage of justice was thereby occasioned.
- (5) The Learned trial magistrate erred in holding that the charges of forgery and obtaining registration of land by false pretences are civil and expressing himself as such. A miscarriage of justice was thereby occasioned.
- (6) The learned trial magistrate erred in law in not basing his judgment on the evidence on record and being influenced by other factors. A miscarriage of justice was thereby occasioned.
- (7) Considering all the evidence on record and the law, the learned trial magistrate erred in law in acquitting the Respondent. A miscarriage of justice was thereby occasioned.”

25. As stated earlier this Appeal was opposed by the Respondent.

Analysis and Determination

26. I have carefully considered the appeal before this court, the record of the proceedings before the trial court as well as the written submissions filed by both parties.



27. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see *Peters -Vs- Sunday Post Limited* [1958] E.A 424]
28. In *Selle and Another -Vs- Associated Motor Boat Company Ltd & Others* [1968] 1 E.A 123 it was stated as follows:-
- “.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
29. Likewise in *Gitobu Imanyara & 2 Others -vs- Attorney General* [2016] eKLR, the court of Appeal stated thus:-
- “An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
30. Therefore the appropriate standard of review in cases of appeal can be summarized in the following three principles:-
- (1) On first appeal the court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.
 - (2) In reconsidering and re-evaluating the evidence the first appeal court must bear in mind and give due allowance for the fact that the trial court had the advantage of seeing and hearing the witnesses.
 - (3) It is not open to the first appellate court to review the findings of a trial court simply on the basis that it would have reached a different conclusion had it been hearing the matter for the first time.
31. The main issue to be determined in this appeal is whether the Prosecution proved the two charges against the Respondent to the legally required standard – that is beyond reasonable doubt. It is trite law that in Criminal proceedings the burden of proof lies on the prosecution. In Halsbury’s *Laws of England* 4th Edition Volume 17 paragraphs 13 and 14 it is stated as follows:-
- “The legal burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action.....” [Own emphasis]



32. The oft cited case of Woolmington -Vs- DPP [1953] AC 462 aptly describes the legal burden as proof in criminal cases as follows:-

“Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence or insanity and subject also to any statutory exception. If at the end of the whole case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner as to whether [the offence was committed by him.], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it can be entertained.”

33. Likewise in the case of R -VS- LIFCHUS [1997] 3 SCR 320, the Supreme Court of Canada explained the legal standard of proof in criminal cases in the following words:-

“The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown [the prosecution] has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty..... the term beyond a reasonable doubt has been cited for a very long time and is part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if based on the evidence before the court you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond reasonable doubt” [own emphasis]

34. In this case the Respondent faced a charge of Forgery contrary to Section 349 of the [Penal Code](#). Section 345 of the Cap 63 Laws of Kenya [Penal Code](#) defines the offence of Forgery thus

“Forgery is the making of a false document with intent to defraud or to deceive.”

35. Section 349 provides for the punishment for the offence of forgery as follows

“349 Any person who forges any document or electronic record is guilty of an offence which unless otherwise stated is a felony and he is liable unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.”

36. Blacks Law Dictionary 10th Edition defines Forgery as:-

“The act of fraudulently making a false document or of altering a real one to be used as if genuine”



37. In order to establish the commission of the offence of Forgery the prosecution must prove each of the following three elements.
- (i) That the document in question was a false document i.e it is not genuine.
 - (ii) That it is the Accused who made and/or altered the document i.e it is the accused who ‘forged’ the document. [the ‘actus reus’ of the offence]
 - (iii) That the Accused knew that the document was a false document. [the ‘mens rea’ of the Offence]
38. In the case of *Caroline Wanjiku Ngugi -Vs- Republic* [2015] eKLR Hon. Justice Mativo stated as follows:-

“Forgery is the false making or material alteration of a writing where the writing has the apparent ability to defraud and is of apparent legal efficacy with the intent to defraud. Thus the elements of forgery are:-

- i. False making of – The person must have taken paper and ink and created a false document from scratch. Forgery is limited to documents. “Writing” includes anything handwritten, type written, computer generated or engraved.
 - ii. Material alteration – the person must have taken a genuine document and changed it in some significant way. It is meant to cover situations involving false signatures or improperly filling in blanks on a form or altering the genuine contents of the document.
 - iii. Ability to defraud – The document or writing has to look genuine enough to qualify as having ability to mislead others to think it’s genuine.
 - iv. Legal efficacy – the document or writing has to have some legal significance.
 - v. Intent to defraud – the specific state of mind of forgery does not require intent to steal but only intent to fool people. The person must have intended that other people regard something false as genuine. A forgery may be committed either by handwriting, through the use of typewriter or a computer.”
39. Therefore, it must be proved that the person charged was indeed the one who put ink to paper and created the document deemed a forgery.

“In *R v Gambling* [1974] 3 All ER 479 the court held that:

“...’forgery is the making of a false document in order that it may be used as genuine.”

This definition involves two considerations first, that the relevant document should be false; and secondly that it was made in order that it might be used as genuine.

Given that each application was ‘false’ was it made ‘in order that it might be used as genuine’? Indeed, what do these words involve in the context of the present case? Clearly they require proof of an intent on the part of the maker of the false document that it shall in fact be used as genuine. We think that they also involve that the untrue statement in the document must be the reason or one of the reasons which results in the document being accepted as genuine when it is thereafter used by the maker. It is this concept we which think is sought to be



expressed in the aphorism – as to the usefulness of which views may differ strongly – that the document must not only tell a lie, it must tell a lie about itself.....”

40. It is common ground that sometime in October 2010 the complainant approached the Respondent seeking to be advanced Kshs. 100, 000. The complainant tendered to the Respondent as security for the loan the Title Deed to his property Aguthi/Gaki/1887. PW2 Simon Kamotho Ngatia confirmed that it was he who took the complainant and introduced him to the Respondent. He further confirms that he was present and witnessed the Kshs. 100,000 being handed over to the complainant.
41. PW2 also stated that in February 2010 he accompanied the parties to view the land in question and ascertained from the Assistant Chief of Muthathini Sub-Location that the said land actually belonged to the complainant. For one reason or another which was not very clear the loan was not repaid. Eventually it transpired that the land in question had been transferred to the Respondent who held a new title in his name.
42. Obviously in order to effect transfer of a parcel of land certain legal procedures must be followed. One of these is to apply for and obtain consent to transfer the land from the Land Control Board. a letter of consent dated 1st October, 2009 issued by the Tetu East Land Control Board was produced in the trial court as an exhibit PExh 14. The first issue requiring determination is whether it was proved that this letter of consent was actually a forged (false) document.
43. PW4 was at the material time the District Officer 1 at Mathira West Sub-County. He told the court that it was he who would sign the consents issued by the Land Control Board thereby giving approval for the transfer of the land in question.
44. The prosecution produced before the trial court a copy of letter or consent dated 1st October 2009 in respect of aguthi/Gaki/1887 (PExh 14). This letter was purportedly signed by PW4 in his capacity Chairman of the Tetu East Land Control Board. PW4 categorically denied that the signature which appeared in the letter of consent dated 1st October 2009 was his signature. He denied having signed that consent at all.
45. PW4 further told the court that the names of the complainant and the Respondent did not appear in the Land Board Register for Bookings. The said register was produced as Pexh 5. Finally PW4 states that to his recollection neither the complainant nor the Respondents ever appeared before the Land Control Board in October 2009. He refers to the minutes of the Land Control Board for October 2009 (Pexh 5).
46. PW6 who was the document examiner testified that he did receive known and specimen signatures from PW4 which he compared with the signature on the letter of consent. In his report PW6 concluded from his analysis that the known and specimen signatures were made by the same hand i.e both were written by PW4. However PW6 found that the questioned signature (which appeared on the letter of consent) dated 1st October 2009) was in his expert opinion made by a different hand i.e it was not PW4 who signed that letter of consent.
47. From the above evidence it would be safe to conclude that this letter of consent was a forgery – it was false document as the chairman (PW4) did not sign the said consent.
48. The second document which was disputed was the application for consent produced as Pexh 2. This application was purportedly made by the complainant seeking consent to transfer aguthi/Gaki/1887 from James Wanyaga (himself) to the Sammy Kabui Maina (Respondent).



49. There was also a transfer form dated 6th May 2010 Pex4 allegedly signed by the complainant. The complainant denies having signed the application for consent and the transfer form. He denies ever having attended at the Land Control Board with the Respondent.
50. In his evidence the document examiner PW6 told the court that upon receiving the copy of the transfer form he compared the signature purported to be that of the complainant thereon with the known and specimen signatures provided by the complainant. The conclusion of the expert witness is that the signature on the transfer form had features of digital manipulation i.e the signature was not actually made by the complainant but could have been lifted and/or superimposed from another document.
51. The findings above are evidence and proof that the transfer form was not signed by the complainant and was in fact a forgery – a false document.
52. Proving that the letter of consent and the transfer form were forgeries is not enough to prove the charge of forgery. This is only part of the battle for the prosecution. In order to secure a conviction the prosecution needed to go a step further and tender evidence sufficient to prove that it was the Respondent who made (forged) the false documents. i.e the prosecution needed to prove that it was the Respondent who committed the ‘actus reus’ for this offence of forgery.
53. The fact that the Respondent at some point handled documents found to have been forged does not amount to proof that it was the accused who forged the said documents. The prosecution needed to show that it was the Respondent who put pen to paper and ‘forged’ the signature of Pw4 on the letter of consent and forged the signature of the complainant on the transfer form. This the prosecution failed to do.
54. The investigations overlooked or deliberately failed to collect the known and specimen signatures of the Respondent (the accused) himself. This was a necessary piece of evidence to enable the document examiner make a comparison between the questioned signatures against the known and sample signatures of the Respondent in order to establish whether it was the Respondent who penned those false signatures. Failure to do this was a fatal omission in the prosecution case.
55. The learned trial magistrate did take note of this fatal omission by the prosecution. In analyzing the evidence the trial magistrate at Pages 19-20 of his judgment correctly observed as follows;-
- “None of the prosecution witnesses testified having seen accused forge the document. Ironically the accused persons’ sample signatures were not examined and the document examiner Pw6 stated that he could not connect the accused person to the making of the said letter of consent of transfer.....”
56. Given this critical failure/omission the prosecution was not able to prove the charge of forgery as against the Respondent. In the circumstances the acquittal of the Respondent on the first charge of Forgery was correct and this court upholds that acquittal.
57. The second charge the Respondent faced was that of obtaining Land Registration by way of False Pretences contrary to Section 320 of the [Penal Code](#). Section 320 provides that:-
- “Any person who willfully procures or attempts to procure for himself or any other person any registration licence or certificate under any law by false pretence is guilty of a misdemeanor and is liable to imprisonment for one year.”
58. It is alleged in the particulars of the charge that the Respondent falsely pretended that he held a consent for the transfer of land from the complainant to himself.



59. In the Case of Mararo -vs- Republic [2016] eKLR the court in describing what constitutes a false pretence stated as follows:-
- “The offence of obtaining by false pretence means knowingly obtaining another person’s property by means of a misrepresentation of fact with intent to defraud. For the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen.”
60. This charge is in some ways a duplication of the first count. Alternatively it is akin to a charge of ‘uttering a False Document’ i.e that the Respondent obtained or procured registration of Title into his name by presenting a false consent and false transfer.
61. In order to prove this charge the prosecution needed to specify from whom the Respondent procured this registration i.e when, where and to whom did the Respondent present the forged documents in order to obtain this registration. No evidence was tendered in this regard.
62. In their written submissions the Appellant stated that the Respondent presented the fake documents to Pw4 in order to secure consent for the transfer from the Land Board. This submission is however not borne out by the evidence on record. In his evidence Pw4 stated as follows:-
- “The seller and buyer appears before the board of not less than 9 members. I never saw Wanyaga or Kibui before the board” [own emphasis]
63. As stated earlier identity of the person who forged the documents in question was never established by the prosecution. Indeed under cross-examination Pw6 the document examiner stated:-
- “I cannot point out if the accused was linked in the Forgery.”
64. In his defence the Respondent narrated how the complainant signed the transfer forms and gave him copies of his photographs. The complainant counters that being the former mayor of Nyeri Town, he was a public person and thus his photograph was easily obtainable. However no evidence was adduced as to where (from what newspaper or publication) the photograph on the transfer form was obtained.
65. The Investigating Officer Pw7 admitted that he could not explain how the complainants photographs were obtained and appeared on the transfer forms. This remains a gap in the prosecution case. How did the Respondent obtain a copy of the complainant’s Identity card, PIN certificate etc other than that the complainant himself provided these documents to the Respondent. There were personal documents of the complainant and would not be easily accessible to others.
66. A look at the transfer form shows that it indicates that the complainant James Justus Wanyaga Gathaka appeared before an Advocate named as Andrew P Kariuki and confirmed his signature. The police it appears did not bother to look for or interview this Advocate to confirm whether the complainant did in fact appear before him.
67. On the contrary the Respondent alleged that he obtained all relevant documentation from the complainant himself. That they went before a lawyer and executed the documents. The Respondent produced as evidence a letter dated 6th May 2013 written by Andrew Kariuki Advocate confirming that the Respondent and the complainant appeared before him and executed the transfer in the presence of the lawyer. The Respondent asserts that the complainant accompanied him to the lands office where they jointly presented the said documents to facilitate the transfer.



68. This defence casts a doubt on the prosecution case. As stated earlier the prosecution took no steps to investigate the letter written by the Advocate nor did they bother to visit the said Advocate. This again was a major omission in the prosecution case.
69. PW5 Samuel Nderitu Ndirangu was at the material time the Land Registrar in Nyeri County. Contrary to the contention by the prosecution that no documents were presented to effect this transfer PW5 told the court that he obtained the Original copies of the letter of consent, and the transfer form from the Land office and he personally certified copies which he gave to the investigating officer, PW5 confirmed to the Court that he personally saw the Original documents but that later when police sought to be given the original documents they were found to be missing. Surprisingly no report relating to these missing documents was ever made to police. No investigation was ever conducted to establish exactly how those documents disappeared from the Lands Office. No explanation was given on how the complainants photograph copy of National Identity Card, Copy of PIN Certificate all ended up at the lands office.
70. It is clear that some mischief was being perpetrated in the lands office in Nyeri. The Respondent did not work in the Lands Office. There is no evidence of the involvement (if any) of the Respondent in the disappearance of the original documents. No explanation was given on how the complainants photograph copy of National Identity Card, Copy of PIN certificate all ended up at the Lands Office.
71. It has not been proved beyond reasonable doubt that registration was falsely obtained by the Respondent. By proving that the relevant documents were lodged at the Lands office the Prosecution have only established the ‘actus reus’ of the offence i.e the presentation of the documents. The mens rea of the offence i.e the intent to procure registration falsely with intent to defraud was not proved beyond reasonable doubt.
72. In light of the defence advanced by the Respondent I find that the prosecution failed to discharge the burden of proof. A doubt still remains. The benefit of doubt must be accorded to the Respondent. In the circumstances the acquittal of the Respondent on this charge was sound and I do uphold that acquittal.
73. Finally I find no merit in this appeal. The same is hereby dismissed in its entirety. The acquittal of the Respondent on both charges by the lower court is upheld. No orders on costs.

DATED IN NYERI THIS 7TH DAY OF MARCH 2025.

.....
MAUREEN A. ODERO

JUDGE

