



**Muhindi v Republic (Criminal Appeal E010 of 2020)
[2023] KEHC 2134 (KLR) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E010 OF 2020
JM CHIGITI, J
MARCH 9, 2023**

BETWEEN

FELIX MWANGI MUHINDI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This Appeal emanates from the judgment of the Chief Magistrate's Court at Thika, Criminal Appeal No. 4345 of 2018 by Hon. E. Riany delivered on 15th December 2020; in which the Appellant was charged with three (III) counts as follows:

Count I

Procuring execution of documents by false presences contrary to section 355 as read with Section 349 of the *Penal code*.

The particulars are that on the 4th day of December 2009 at Thika Land Registry within Kiambu County, jointly with others not before this court, changed the parcel number Ruiru Kiu/Block 2 Githunguri 3637 from the late Karanja Thiong'o Gathungu to the name of Felix Mwangi Muhindi and procured to the land registrar to execute the said Title Deed.

Count II

Intermeddling with the property of the Deceased person contrary to section 45 (1) (2) (a) cap 160 of the *Succession Act* Cap 160 Laws of Kenya.

The particulars are that on the 4th day of December 2009 at Thika Land Registry within Kiambu County, jointly with others not before the court, except so far expressly authorized by law or a grant of representation, changed parcel no. Ruiru Kiu/ Block 2 Githunguri 3637 measuring 0.5600 hectares



then the free property of the deceased person namely Karanja Thiong'o Gathungu to the name of Felix Mwangi Muhindi and procured to land Registrar to execute the said Title Deed.

Count III

Falsely acknowledging deeds contrary to section 383 as read with section 36 of the *Penal code*.

The particulars are that on 4th December 2009 at Thika Land Registry within Kiambu County, jointly with others not before the court, without lawful authority, made in the name Felix Mwangi Muhindi before a land registrar an acknowledgement of liability to the deed.

2. On 18th July 2018, the charges and the particulars were read out to the Appellant, where he pleaded not guilty; and a plea of not guilty was entered.
3. In an attempt to prove its case, the prosecution called six (6) witnesses, while the Appellant called two (2) witnesses. The trial court found the prosecution had proved its case beyond reasonable doubt and convicted the Appellant under Section 215 of the *Criminal Procedure Code*, and proceeded to sentence the accused as follows:
Count 1 fine of kshs. 600,000/= or in default 2 years in custody
Count 2 fine of kshs 5,000/= or in default 2 months in custody
Count 3 fine of Kshs.40, 000/= or in default k4 months in custody.
4. The Appellant being aggrieved by both the conviction and sentence of the trial court judgment, filed this Petition of Appeal dated 22nd December 2020; and amended on 23rd December 2020, citing 18 grounds of Appeal.
5. The Appeal was canvassed by way of written submissions

Appellant's Submissions

6. Counsel filed submissions on 26th January 2023, the Appellant submitted that he genuinely purchased the property from the Deceased Karanja Thiongo in 2005 after conducting a proper search and establishing that the property belonged to the deceased. He submitted that the trial court failed to establish the ingredients of each count and to satisfy itself that the prosecution had proved each ground to the required standard, offending the mandatory provisions of Section 169 of the *Criminal Procedure Code*.
7. Counsel submitted that the evidence of PW5 was not credible as she had admitted that the Lands Registry was always in chaos, and proceeded to open a second register, after the first register in respect to the parcel of land went missing. Counsel submitted that the Appellant did not interfere and/or intermeddle with the deceased estate as there was proof of the sale agreement between the deceased and the appellant which was drafted by PW6. That legality of the sale agreement was not challenged by the prosecution.
8. Counsel testified that the prosecution failed to controvert the evidence of Exhibits 1, 2, 3, 4a, and 4b which confirmed the deceased sold the property Ruiru Kiu/ block 2 Githunguri 3632 to the Appellant.
9. Counsel submitted that property in dispute does not form part of the deceased estate, as the same had already been transferred to the Appellant before the demise of the deceased. Counsel urged the court to allow the Appeal and quash the conviction.



Respondent's submissions

10. Counsel filed submissions on 26th January 2023, where it was submitted that the prosecution had proven beyond reasonable doubt that the Appellant obtained a defective title; the fact that the transfer was done in 2009 after the demise of Karanja Thiongo.
11. Counsel submitted that the charge of intermeddling was properly proved as the Appellant dealt with the property of the deceased after his lifetime, without involving the deceased dependents, and during the subsistence of a succession case.
12. Counsel submitted that the sentence meted on the Appellant was just in the circumstances, urged the court to uphold the sentence and find the prosecution proved its case beyond reasonable doubt.

Analysis and determination

13. The duty of the first appellate court is to re-analyze and re-consider the evidence tendered before the trial court, with a view to arriving at its own independent conclusions. As was stated in the case of *David Njuguna Wairimu vs. Republic* [2010] eKLR, where the court of appeal stated:

“The evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”

14. Before I proceed with the Appeal, I will first analyze the trial court evidence.

The trial court evidence

15. After the prosecution called three (3) witnesses, counsel for the Appellant pleaded with the court to have the matter start denovo. Despite opposition by the prosecution, and counsel watching brief for the complainants, the matter started denovo.
16. PW1 Munki Mulatia testified that he was the investigating officer in this matter before being transferred to Bomet. He received a complaint from three (3) persons over the property Ruiru/Kiu Block 2 Githunguri 3637 upon conducting a proper investigation, he established that the property belonged to the deceased Karanja Thiongo. He informed the court that the property was transferred to his dependents through the succession caused. After the report of the loss of the share certificate, Githunguri Ranching issued a new share Certificate to the dependents. PW1 informed the court that the Appellant's documents did not give a history of the transactions. He told the court that as per the green card the green card. He stated that in 2005 the deceased was 101 years, confined to a wheel chair, and not in a position to enter into a sale transaction.
17. PW2 John Maina testified that he is the Chairman of Githunguri Constituency Ranching Co. Ltd. He said as per their records Ruiru/Kiu Block 2 Githunguri 3637 belongs to Karanja Thiongo Gathungu and the land was later transferred to Shadrack Mburu Karanja, Charles Njoroge and Mary Wajunu. He confirmed the Dependents of the Deceased had reported the issue of loss of share certificate, and Githunguri Ranching issued them with a new share certificate no 781 on 11th April 2014, as well as a



- clearance certificate after payment of the dues. PW2 told the court he signed the transfer form, that he does not know the Appellant as the Appellants name does not appear in their membership register.
18. During cross-examination, PW2 told the court that the title deeds were processed upon the request of the members. As per the Githunguri Ranching records, the deceased did not have a title.
 19. PW3 Charles Njoroge Kahuria testified that the deceased was his father who lived with his sister Naomi Njeri as he was blind. That his father died on 11th April 2007, the succession cause was filed in 2008, and the grant was issued on 20th June 2013. PW3 stated that he and his siblings intended to sell the property Ruiru Kiu/ Block 2 Githunguri 3637 and paid all the due on 2nd May 2014, in order to get a share certificate and they were issued with receipts. That Share Certificate no. 781 was in the name of Mary Wangui Mbugua. PW3 indicated that they had reported the loss of the deceased's share certificate. That upon conducting a search, the property was registered in the name of the Appellant (Felix Muhindi), who sued them in a civil suit. According to PW3, his father was elderly and sickly; and thus could not sell the property. He stated that the letter dated 27th May, 2014 from Githunguri Ranching confirmed the land belonged to them.
 20. PW4 Edith Wanjiru Karanja corroborated the evidence of PW1, she testified that the property known as Ruiru Kiu/block 2 Githunguri 3637 was owned by his father and after his demise, a grant was issued to Charles Njoroge, Shadrack, and Mary Wanguru Mbugua in 2013. She stated that the Appellant appeared and claimed the land was sold to him by the deceased, vide a sale agreement dated 1st August, 2005; and obtained a title deed in 2009. She denied the signature on MFI No. 15 does not belong to the deceased.
 21. PW5 Bernard Leitich testified that he works with the Ministry of Land as a physical planner on lands registry currently stationed at Arthi House but was previously stationed in Thika. He stated that he wrote the letter dated 22nd June, 2018 to the DCIO Ruiru on the inquiry of a parcel of land known as Ruiru/Kiu block 2 Githunguri 3637, he confirmed as per the Lands records Karanja Thiongo was the 1st Allotee from the Government of Kenya, and the 2nd Bearers were Mburu Karanja Thiongo, Charles Njoroge Kihura and Mary Wanjiru Mbugua who jointly transferred from Githunguri Ranching. PW5 proceeded to inform the court that the records showed that Karanja Thiongo transferred the property to Felix the Appellant, and according to PW5 the transaction was not genuine as the signature of the title deed was a forgery.
 22. In cross-examination, PW5 testified that in 1992 the parcel of land was first owned by the Government, before being transferred to the Deceased Karanja Thiongo in 1992.
 23. PW6 James Mwaura Ndungu an advocate, testified that he drafted the agreement dated 1st August, 2005 between Karanja Thiongo and Felix M. Muhindi for the sale of Ruiru/Kiu Block 2 Githunguri/3637. The purchase price was Kshs.260,000/=, a deposit of 26,000/= was paid on execution of the agreement, and the balance was to be paid after obtaining the LCB consent to transfer. That the parties also executed the transfer documents and a title deed was issued in favour of the Appellant (Felix Muhindi).
 24. PW6 states the purchaser took possession of the property in 2014, *vide* the instructions of the purchaser he instituted ELC cause no. 25 of 2014 seeking injunction. He states he was summoned by the DCI Ruiru and recorded his statement. PW6 informed the court that both the purchaser and the Vendor appeared before him, before he drafted the agreement. That he conducted a search before drafting the agreement, and confirmed the property was registered in the name of Karanja Thiongo.
 25. At the close of the prosecution case, the trial court, upon considering the evidence tendered by the prosecution, found the Appellant had a case to answer. The Appellant was placed on his defence.



Accused case

26. The Appellant DW1 testified that he was a senior Government Officer and retired in 2019, and that he is the registered owner of the suit property since 2005. He adduced the original title deed. DW1 informed that he entered into an agreement for sale with the deceased after conducting a search and establishing the property belonged to Karanja Thiongo. He told the Court that Githunguri Ranching had issued a clearance letter dated 22nd January, 1992 a letter to the Lands Registry Kiambu, and recommended Title Deed be issued to the Karanja Thiongo. DW1 maintained that he said he was the registered owner of the parcel of land that was transmitted to the dependents of the deceased, through the succession cause. Further, DW1 testified that the succession file that transmitted the property to the Dependents, who are complainants, could not be traced in the court registry.
27. DW2 the Court Administrator Kiambu law courts, testified that he could not trace the succession file. He confirmed a matter was filed in respect to the Estate of Karanja Thiongo under Succession No. 30 of 2008.

Determination

28. The Appellant was charged on Count I, with the offence of procuring execution of documents by false presences. That on 4th December, 2009 at Thika land Registry changed the parcel of land known as Ruiru Kiu/Block2 Githunguri 3637 from the late Karanja Thiongo to Felix Mwangi Muhindi (Appellant).
29. PW5 testified that the signature on the title deed issued to the deceased was a forgery; he however, stated he could not tell the person who signed the title deed, and neither did he conducted an inquiry on the validity of the title. PW5 also testified that with respect to a parcel of land, there were two (2) cards. The 1st card showed the deceased as the owner of the parcel of land; while the 2nd card was opened on 22nd January, 2018. At the time of opening of the second card, the property was already registered in the name of the Appellant, Felix on 16th November, 2009. PW5 confirmed the title issued to the Appellant is a genuine title having been signed by Peter Kihie, the Land Registrar. According to PW5 the deceased should be blamed for his fake title. He further testified in instances of direct transfer from Githunguri Ranching there is not grant that is required.
30. On the other hand, PW6 testified that both the Appellant and the deceased appeared in his office, and that he prepared the sale agreement. He confirmed the vendor executed the agreement for sale.
31. From the evidence of PW5 it is evident the Deceased was the 2nd owner of the suit property and a title deed was issued in the year 1992.
32. The evidence of the prosecution had some loose ends, PW5 admitted there was a laxity from their end to a point of opening two (2) cards when a complaint was raised in 2018, instead of looking for the previous card in respect to the first card.
33. It therefore follows that, the title deed issued to the Appellant was not a forgery as per the evidence of PW5. The prosecution failed to prove how the Appellant falsely obtained a copy of the title document. I find that the offence was not established by the prosecution.
34. In regard to the count of intermeddling charge, there was no evidence to support the charge. The Appellant had the title deed to the property which the land registrar confirm was a genuine title, and the Appellant proceeded to take possession of the suit property. The prosecution did not challenge the sale agreement between the Appellant and the deceased. I find that the Appellant having taken possession of the suit property after the purchase could not amount to intermeddling.



35. Further, it is important to note that the dependents of the deceased alleged that the share certificate of the deceased was lost in 2007, but only made a complaint in the year 2018. It is also interesting to note that despite there being a succession matter filed in respect to the estate of the late Karanja Thiongo, the file has gone missing from the court registry and the same cannot be traced as per the evidence of DW2 the then Executive office of Kiambu law courts.

Disposition:

36. I find and hold that the prosecution failed to prove its case to the required standard, and, as such, the Appeal herein succeeds, and is hereby allowed.

Order:

The conviction of the Appellant, in Thika CMCRC No. 3445 of 2018 is hereby quashed and the sentence imposed upon him in each count is hereby set aside.

37. Any monies or securities deposited by the Appellant as fine should be refunded to the depositor.

DELIVERED AT KIAMBU THIS 9TH DAY OF MARCH, 2023.

JUSTICE CHIGITI, SC

JUDGE

In the Presence of;

