



REPUBLIC OF KENYA



**Thuo v Republic (Criminal Appeal 147 of 2024)
[2024] KEHC 14043 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14043 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 147 OF 2024
DR KAVEDZA, J
NOVEMBER 12, 2024**

BETWEEN

PETER KARANJA THUO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against original conviction and sentence delivered by Hon. A. Mwangi (C.M) on 20th June 2023 at Kibera Chief Magistrate's Court Criminal Case no. 40 of 2013)

JUDGMENT

1. The appellant was jointly charged with another not before this court for the following offences: Count 1, conspiracy to defraud contrary to Section 317 of the Penal Code; Count II, stealing contrary to Section 268 (1) as read with Section 275 of the Penal Code; Count III, obtaining registration by false pretences contrary to Section 320 of the penal code; Count IV, giving false information to a person employed in the public office contrary Section 129/(b) of the Penal Code; Count V, conspiracy to defraud contrary to Section 317 of the Penal Code; Count VI, giving false information to a person employed in a public office contrary to section 129 (6) of the Penal Code and Count VI, stealing contrary to Section 268 (1) as read with Section 275 of the Penal Code.
2. After a full trial he was convicted on all counts and sentenced as follows: Count 1, fine of Kshs. 100,000 in default to serve 12 months imprisonment; count II, fine of Kshs.10,000 in default to serve 3 months imprisonment; Count IV, fine of Kshs. 50,000 in default to serve 6 months imprisonment; Count V, fine of Kshs. 100,000 in default to serve 12 months imprisonment; Count VI, fine of Kshs 50,000 in default to serve 6 months imprisonment and Count VII, fine of Kshs. 10,000 in default to serve 3 months imprisonment.
3. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He argued



- that the trial court failed to consider his evidence and submissions. He urged the court to quash the conviction and set aside the sentence imposed.
4. The appeal was canvassed by way of written submissions which have been duly considered.
 5. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence that was before the trial court, and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
 6. The prosecution's case against the appellant was as follows: PW1, Mugo Rutere, testified that he co-owned a bar called Maganjo in Kajiado, which was established in 1947 by him and others, and that they were issued a plot of land (No. 18 in Kajiado) by the government. He was entrusted with the title deed, which he lost in 2009. The plot, on which they had built houses, was still theirs, and they had been paying rates to Kajiado County Council. The appellant, who worked for him, was charged with stealing the title deed. On cross-examination, PW1 confirmed the title deed was in the name of Maganjo Company.
 7. PW2, Ndamberi Mao, stated that the land was originally applied for in 1969, with all seven members being joint owners. In 2004, they applied to extend the lease. He confirmed that PW1 lost the title deed and reported it to the police. He also explained that the second accused, Anna Wanjiru, was the mother of the appellant and owned Maganjo & Co Ltd. When they discovered the plot had been transferred to the appellant, they reported it to the police for fraud. PW2 revealed that Peter Karanja, a former business partner, had altered the title from Maganjo & Co to Maganjo & Co Ltd, including his and his mother's names. Karanja had also taken out a loan using the land as collateral. On cross-examination, PW2 denied knowledge of Maganjo & Co Ltd and accused the appellant of stealing and altering the documents. On re-examination, he added that Karanja falsely reported them to the police.
 8. PW3, Wilfred Njogu Mwaniki, testified that he is the son of Mwaniki Miano, a registered proprietor of Parcel No. 9923 in Kajiado. The plot, originally granted for 33 years, was renewed for an additional 66 years in 2002. The business partnership was registered in 1968, and his father ran it until his death in 2005, after which PW3 took over. He confirmed the appointment of the appellant their bar and restaurant, though he later started absconding. In 2009, the title deed, entrusted to Mugo Rutere, went missing and was reported to the police, but a provisional certificate was obtained. Later, they discovered that a new lease for the plot was issued to "Maganjo & Company Ltd" in 2008. They also found that Maganjo & Co had been allotted another plot in Majengo, and that the appellant had unauthorisedly transferred the property to Hamud Osman. PW3 testified that the directors of Maganjo & Company Ltd had fraudulently converted the property and obtained a loan using it. He also paid rates for the property but was later arrested for being on the land of Osman Mohammed. On cross-examination, PW3 acknowledged the partnership's application for an extension of the lease after its expiry, and presented various documents supporting his claims.
 9. PW4, Henry Omukamani Wamgundi, a secretary at the National Land Commission, testified that he signed an allotment letter dated 14/1/2009 transferring land to Hamud Osman from Maganjo & Co. He verified that the application for the transfer was in the name of Maganjo & Co. Ltd and did not find the addition of "Ltd" significant at the time. He said he signed the documents after proper verification by other officers.
 10. PW5, Kenneth Ombogo Aranga, a Senior Administrative Officer at Kajiado County Government, testified about the history of land No. 9923/14 (Block 1/140), allocated to Maganjo and Company in October 1969. He confirmed that a title deed was issued in 1970, and the documents provided by the Directorate of Criminal Investigations (DCI) were responded to with relevant records,



including allotment letters and company documents. However, on cross-examination, he pointed out irregularities in the documents and suggested that the County Government had conducted an irregular transfer. He noted the absence of records for Maganjo and Company and discrepancies in the allotment letters.

11. PW6, Lukoko Were, a former Land Registrar at Kajiado, testified that a lease for the land was registered in the name of Maganjo & Co. Ltd in 2008, with a certified copy of the lease issued. PW7, James Ngige Mburu, a former officer at Ardhi House, admitted he processed a new lease for the land without recognizing the difference between "Maganjo & Co." and "Maganjo & Co. Ltd." He was not responsible for verifying the authenticity of documents. PW8, James Nyamari Osoro, another officer at Ardhi House, confirmed that the lease extension for the land was issued in the name of Maganjo & Company in 2002.
12. PW7, James Ngige Mburu, testified that in 2008, he prepared forms for a new lease for Land No. Kajiado/Block 1/140 in favour of Maganjo & Co. Ltd, without noticing the distinction between Maganjo & Co and Maganjo & Co Ltd. He was not responsible for verifying the authenticity of the documents.
13. PW8, James Nyamari Osoro, recalled processing the lease extension for LR No. 9923/18 in 2002, issuing an allotment letter to Maganjo & Company. He confirmed the Kajiado County Council had no objections and stated the registrar of titles handled all grants and leases.
14. PW9, a registrar from the Companies Registry, clarified that both Maganjo & Company and Maganjo & Co. Ltd were distinct entities and noted the discovery of a forged document related to the business name. PW10, a Land Registrar, confirmed that Maganjo and Company was the registered proprietor of the land, with a non-discharged charge for Ksh. 112,500, but the title deed showed irregular entries. PW11, the Investigating Officer, detailed the fraud investigation, noting the theft of the title deed in 2009 and the unlawful transfer of the land to Maganjo & Co. Ltd.
15. PW12, a Land Registrar, corroborated PW1's evidence regarding the ownership of the land, confirming that the title was originally issued to Maganjo & Co., and clarified the standard procedures for endorsing changes to titles. PW13, an assistant director at the Ministry of Lands, explained the rectification process of the title due to a name change, emphasizing that such changes are typically endorsed on the title deed itself. He confirmed that the lease extension request came from Maganjo & Company, not Maganjo & Co. Ltd.
16. In his defence, the appellant contended that he was unaware of the land's registration in 1969. After his father's death in 1992, he found a title deed for Maganjo & Co Ltd, which had expired, and attempted to extend the lease. However, he was told by the Registrar of Companies that no such company existed. To resolve this, he registered a company with the same name, received a letter of incorporation, and submitted it to the Registrar of Lands. He later obtained the title, but disputes arose. He denied altering documents or engaging in fraudulent activities, insisting the case was an attempt to frustrate his efforts to secure ownership of the land. He also clarified that the charge to ICDC was paid off with a Kshs. 3,000 fee for discharge.
17. The prosecution, through the testimony of PW2, Ndamberi Mao, has proved beyond a reasonable doubt that the appellant, along with others, engaged in a deliberate scheme to defraud by altering crucial land documents. The land that was originally registered under the name "Maganjo & Co." was fraudulently transferred to the name of "Maganjo & Co. Ltd.," a company not originally linked to the property. The appellant's mother, Anna Wanjiru, was implicated in this fraudulent transfer. PW2's testimony clearly establishes that the appellant was part of a conspiracy to defraud the rightful owners of the land.



18. For the offence of stealing, PW1, Mugo Rutere, testified that the appellant had been entrusted with the title deed for land No. 9923/18. In 2009, the title deed went missing, and its subsequent use in fraudulent transactions indicates that the appellant stole the title deed. PW3, Wilfred Njogu Mwaniki, further corroborated the theft by confirming that the missing title was central to the appellant's fraudulent activities. The evidence presented substantiates the charge of stealing.
19. For the offence of obtaining Registration Through False Pretenses, PW4, Henry Omukamani Wamgundi, and PW6, Lukoko Were, both testified that the appellant altered the title deed and re-registered the land under the name "Maganjo & Co. Ltd.," which was not the true entity owning the land. This alteration, carried out by the appellant, led to the unlawful registration of the land in the name of a company that had no legitimate claim. Additionally, PW3 confirmed that the appellant transferred the property to a third party, Hamud Osman, using the fraudulent company name. Furthermore, the appellant obtained a loan by using the land as collateral, all of which occurred through fraudulent means. This evidence conclusively proves that the appellant obtained registration through false pretenses.
20. For the offence of giving False Information to a Public Officer, PW7, James Ngige Mburu, a former officer at Ardhi House, testified that in 2008, he processed a new lease for the land in question in favour of "Maganjo & Co. Ltd." However, the appellant had misrepresented the company's name, causing a public officer to issue the lease under a false name. PW7 admitted that he failed to verify the authenticity of the documents, thus being misled by the appellant's false representation. PW8, James Nyamari Osoro, further corroborated that the original lease was issued in 2002 in the name of "Maganjo & Company," not "Maganjo & Co. Ltd." This false information given to the public officer was critical in facilitating the appellant's fraudulent actions.
21. The documentary evidence presented by PW9, the Company Registrar, confirmed that "Maganjo & Co." and "Maganjo & Co. Ltd." were distinct legal entities. The appellant's attempt to falsify the change of name was further exposed when forged documents were discovered. PW10, the Land Registrar, highlighted irregularities in the title deed, which pointed to fraudulent alterations. Additionally, PW11, the Investigating Officer, outlined the series of fraudulent actions the appellant took, using the stolen title deed to unlawfully transfer the land.
22. In his defence, the appellant denied committing the offences. However, his role in the theft, fraudulent land registration, and conspiracy to defraud is clearly demonstrated through witness testimonies and documentary evidence, establishing the appellant's involvement in these crimes.
23. The prosecution has established, beyond reasonable doubt, that the appellant committed all four offences as per the charge sheet. The appellant's conviction is therefore affirmed on all counts.
24. On sentence, the appellant was sentenced as outlined in paragraph 2 of this judgement. Before sentencing, the trial court considered his mitigation, and issued an appropriate sentence.
25. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed in its entirety.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 12TH DAY NOVEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant present

Mburugu for the Respondent



