



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 31 OF 2016

DANIEL MWITI M'THURANIRA APPLICANT

Versus

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence by Hon. THRIPSISA WANJIKU
CHERERE (Ms.) – CHIEF MAGISTRATE dated 9th April, 2015 in Nanyuki Chief Magistrate's Court
Criminal Case No. 741 of 2013)*

JUDGMENT

1. **DANIEL MWITI M'THURANIRA** the appellant herein was charged before the Chief Magistrate's Court Nanyuki with the **offence of forgery contrary to section 349 of the Penal Code**. The particulars of that offence show that the appellant was charged with forgery of a **Grant of Letters of Administration Intestate** of his deceased father's estate. After trial he was found guilty and was sentenced to three years imprisonment.

2. He has presented this appeal only against sentence.

3. The facts that led to his conviction are that grant of Letters of Administration Intestate over his late father's estate were issued by the Meru High Court. In that grant the Meru High Court subdivided his late father's land amongst the beneficiaries. His brother in that subdivision was given a portion of land. His brother died before a title was issued in respect of that land. The appellant forged grant of letter of administration intestate over his late father's estate by which his late brother's portion of land was allocated to the appellant. This in essence disinherited his late brother's wife and children. The late brother's wife did not know of that forgery or any other transaction on that land until she saw someone fencing her land. This is when inquiries were made and it was found out that the appellant had forged the grant of Letters of Administration Intestate and had sold his late brother's land. The appellant when he offered his defence did not deny the forgery. Indeed this is what he stated in his defence:-

“I did not sell my sister in law's land. I sold my own piece of land that was given to me after the land was subdivided according to my father's wishes. I am the one that altered the order because my deceased brother was to get land from elsewhere. I sold the land to Erastus.”

4. It is obvious that the appellant admitted that he forged the Grant of Letters of Administration. In doing so he was callous on the adverse effects that forgery and the sale of his late brother's land would have on his late brother's wife and children. The trial court in sentencing the appellant took a dim view of his actions and concluded that the appellant did not deserve leniency. The trial court sentenced the appellant to three years imprisonment which is the maximum sentence under **section 349** of the Penal Code. In this court's view the learned trial magistrate did not act on a wrong principle which would attract interference

of this court. On this there is a case in point from the Zambian jurisdiction namely the case of **KAAMBO V THE PEOPLE (1976) ZR 122** where this court stated:-

“The basis of sentence must always be the proper sentence merited by the offence itself after which the court considers whether the accused is entitled to leniency.”

5. It is in view of the above and appellant’s callous act of disinherit his late brother’s family that the appellant’s appeal against sentence is hereby dismissed.

DATED AND DELIVERED THIS 7TH DAY OF FEBRUARY 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Daniel Mwiti M’Thuranira

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE