



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL APPEAL NO. 87 OF 2012**

**PHILIP KAMAU MWANGI..... APPELLANT**

**versus**

**REPUBLIC .....RESPONDENT**

*(arising from the judgment of Hon. L. Mbugua , Senior Principal*

*Magistrate Nanyuki in Criminal Case No. 710 of 2010)*

**JUDGMENT**

1. The appellant was charged with the following charges and particulars thereof are as stated herein as follows:

**Count 1:** On or before 1st October 2010 at Githurai in Thika District within Central Province; jointly with others not before court conspired together to commit a felony in order to obtain Ksh. 1,150,000/- from PETER KAMAU.

**Count II:** On the 9th day of August 1993 at unknown place within the Republic of Kenya, jointly with others not before court forged Title Deed Number RUIRU/KIU/BLOCK 2 GITHUNGURI 2636 purporting to be a genuine Title Deed issued to **PAUL NJOROGE KARANJA** by the

District Land Registrar Kiambu. .

**Count III:** On the 16th day of April 1996 at unknown place within the Republic of Kenya jointly with others not before court forged an identity Card No. 4924856 purporting to be a genuine Identity Card issued to **PAUL NJOROGE KARANJA** by the National Registration Bureau.

**Count IV:** On the 20th day of September 2001 at unknown place within the Republic of Kenya, jointly with others not before court, forged Personal Identification Number Certificate Number A001124791 M purporting to be a genuine Personal Identification Number Certificate issued to **KARANJA PAUL NJOROGE** by the Kenya Revenue Authority.

2. He pleaded not guilty guilty to all the charges and was tried and convicted to six (6) one and half (1½) and two (2) years respectively to run concurrently.
3. Being aggrieved by the said conviction and sentence he filed this appeal and raised the following grounds of appeal.

1. *The learned trial magistrate erred in law and facts in disregarding the evidence of the appellant.*

2. *The learned trial magistrate erred in law and facts in failing to find that the prosecution evidence was uncorroborated and that it did not prove its case beyond reasonable doubt.*
  3. *The learned trial magistrate gravely erred in law and facts in basing her judgment on wanting evidence by the prosecution.*
  4. *The learned trial magistrate erred in law and facts by convicting the appellant on an incomplete offence and such non existence charge.*
  5. *The learned trial magistrate erred in law and facts by sentencing the appellant to six years in prison; a harsh and excessive sentencing in the circumstances.*
  6. *The learned trial magistrate erred in law and facts by convicting the appellant a lone in an offence (conspiracy to commit a felony) that requires at least two people for it to be complete.*
  7. *The learned trial magistrate totally misapprehended the law and facts and thus arrived at an erroneous conclusion.*
  8. *The learned trial magistrate erred in disregarding the appellant's evidence and submissions.*
  9. *The learned trial magistrate erred and misdirected himself in law in holding the case for the prosecution based on unproved charges.*
1. At the trial before us Mr. Gakinya appeared for the Appellant and urged us to allow the appeal while Mr.Njue appeared for the state and supported the conviction and sentence.

#### **SUBMISSIONS.**

2. It was submitted on behalf of the appellant that he was charged with others not before court but that those were people who were known and associates of the complainant. It was further submitted that the complainant was a party to the conspiracy and that there was a serious doubt as to the extent of his involvement therein since once he became suspicious of the sale he went along with the same and took with him police from Karatina to Githunguri where only the appellant was arrested while his agents were never arrested. This therefore points to the involvement of his agent in the conspiracy.
3. It was submitted that the Title Deed said to have been forged which turned out to be said Title, the owner of the said title had not been traced despite the fact that there was information from the Land buying company. It was further submitted that investigations in the matter were concluded way after the first prosecution witness had testified confirming that the decision to charge the appellant was taken before investigations were completed.
4. It was submitted that the sentences meted out to the appellant were harsh and punitive since the mitigation of the appellant was not taken into account noting that he was sixty (60) years old.
5. Mr. Njue for the state submitted that the fact that the scheme was not fruitful does not negate the offence since it is a fact that there was a conspiracy and in support thereby relied upon the case of BENSON KANGETHE NJENGA and 2 OTHERS v R HIGH COURT AT NAKURU CRIMINAL APPEAL NO. 163 OF 2003
6. From the submissions herein it is clear that the appeal herein is only on sentence Mr. Gakinya having in his submission admitted that conspiracy was proved but that the scheme was not completed and that the trial court did not take into account the age of the appellant and his mitigation.
7. It is clear from the evidence tendered that the accused was involved in the conspiracy herein however from the evidence tendered it is not clear whether it was a conspiracy to commit a felony or a misdemeanor.
8. The evidence tendered on count 1 to our view only supported the offence of conspiracy to commit an offence of obtaining money by false pretence which is a misdemeanor and which attracts a punishment of three (3) years as the prosecution case was that the appellant wanted to obtain

- money from the sale of land which was not his.
9. Whereas we agree with Mr. Njue that the fact that the scheme was not successful and that the other participants were not arrested and charged does not affect the conviction herein we opine that the offence proved was that of conspiracy to commit a misdemeanor and would therefore allow the appeal on count one by setting aside the conviction and sentence and substituting the same with a conviction for the offence of conspiracy to commit a misdemeanor and sentence the appellant for a period of two (2) years, having taken into account his mitigation.
10. We are satisfied that the conviction of the appellant on the other two (2) counts were safe and the sentence thereon appropriate.

**ORDER**

11. We therefore allow the appeal on count 1 substitute the conviction and set aside the sentence of six years and substitute the same with two(2) years and dismiss the appeal on count 3 and 4. The sentence shall run concurrently and so order.

Delivered, dated and signed at Nyeri this 5th day of February 2014.

J. WAKIAGA

JUDGE

A. OMBWAYO

JUDGE

Mr. Cheboi for the state

Appellant in person.

Court: Judgment read in open court in the presence of the above named.

J. WAKIAGA

JUDGE

A. OMBWAYO

JUDGE