



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL APPEAL NO. 129 OF 2010**

MARY WANJERI KIIRU Alias

GRACE WACHORO WARUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an Appeal from the Sentence and Conviction of F. W. MACHARIA Senior Resident  
Magistrate Embu in Criminal Case No. 1725 of 2006 on 20<sup>th</sup> August 2010)*

**J U D G M E N T**

MARY WANJERI KIIRU Alias GRACE WACHORO WARUI hereinafter referred to as the appellants was charged with the following offences:-

Count 1:

**Making a document without authority contrary to Section 357(a) of the Penal Code.**

The particulars as stated in the charge sheet were as follows:-

*On the 31st day of July 2006 at Equity Bank Branch in Embu Municipality in Embu District within Eastern province jointly with others not before court with intent to defraud, without lawful authority or excuse made a cheque No. 547748 dated 5/7/2006 for Kshs.860,468 purporting to be a genuine cheque issued by National Social Security Fund Headquarters Nairobi*

Count 2:

**Forgery Contrary to Section 349 of the Penal Code.**

*On the 31st day of July 2006 at Equity Bank Branch in Embu Municipality in Embu District within Eastern province jointly with others not before court forged a cheque No. 547748 dated 5/7/2006 for Kshs.860,468 purporting it to be a genuine cheque drawn by National Social Security Fund Headquarters Nairobi.*

Count 3:

**Uttering a False Document contrary to section 363 of the penal code.**

***On the 31st day of July 2006 at Equity Bank Branch in Embu Municipality in Embu District within Eastern Province jointly with others not before court knowingly and fraudulently uttered a cheque No. 547748 dated 5/7/2006 for Kshs.860,468 to DOREEN K. KINYUA purporting it to be a genuine cheque drawn by National Social Security Fund Headquarters Nairobi.***

Count 4:

**Attempting to obtain money by false pretences Contrary to Section 389 of the Penal Code.**

***On the 31st day of July 2006 at Equity Bank Branch in Embu Municipality in Embu District within Eastern Province jointly with others not before court attempted to obtain Kshs.860,468 by uttering a fake cheque No. 547784 dated 5/7/2006 for payment purporting it to be a genuine cheque issued by National Social Security Fund Headquarters Nairobi.***

She denied all the counts and the matter proceeded to full hearing and she was convicted on all counts and sentenced to 5 years, 3 years, 3 years and 1 year respectively. The sentences were to run concurrently. She was dissatisfied with the judgment and filed this appeal against conviction and sentence. She has cited the following grounds in support of her appeal:-

- 1. The learned trial Magistrate erred in law and fact in convicting her disregarding the fact the identity card and the name in the cheque were not under her name.***
- 2. The trial Magistrate erred in law and fact by not considering that PW5 while witnessing told the court that she was not sure of the name which was stated on the cheque.***
- 3. The trial Magistrate erred in law and fact by relying on the information given by PW1 (NSSF Manager Embu) instead of NSSF Manager Nairobi where the cheque originated from.***
- 4. She stayed in police cell Embu for 4 days, Kasarani police cell for 2 days and Pangani police cell for one day summing upto 7 days thus her constitution rights were violated.***
- 5. The sentence of five (5) years imprisonment is harsh and excessive bearing in mind that her health is not good and deteriorated daily.***
- 6. She is a widow and a mother of four (4) children, two in high school and two in primary school wholly depend on her for their education thus committing her in custody jeopardize their future life.***
- 7. She has a succession case in Nairobi High Court and her children are young and too naive to handle any court case thus putting her in prison custody may leave her children without any inheritance.***

The case presented to the court below was that the appellant presented herself to PW4, a teller at Equity Bank on 31/7/2006. She was armed with a cheque No. 547748 from NSSF for Shs.860,4468/= (EXB1) to be paid into Account No. 0190190329125 in the name of Grace Wachoro. The appellant also presented PW4 with a deposit slip (EXB2) for the said cheque. The amount was huge and so PW4 presented the appellant to the Bank Manager (PW5) for further direction. Further scrutiny of the cheque revealed other anomalies in the said cheque (EXB1). PW5 called the Branch Manager NSSF Embu (PW1) who confirmed that the said cheque was fake as cheque No. 547748 had been drawn in Nairobi and the payee was one KARACHU NGANGA. The amount in it was Shs.26,114/20. He said the cheque had been signed by PW2 and PW3 who were employees of NSSF. The said signatories disowned the Cheque (EXB1). The CID officers Embu were then contacted. The cheque deposit slip and the identity card in the name of Grace Wachoro which the appellant had presented were handed over to the CID officers. The appellant's fingerprints were taken and forwarded together with the identity card to the Registrar of Persons. The report showed that the appellant was not Grace Wachoro but Mary Wanjeri Kiiru.

The Document Examiner (PW6) was not presented with any signature of the appellant. Infact his evidence does not address anything about the cheque (EXB1). The appellant in her unsworn defence said her sister Grace Wachoro had asked her to deposit the money in her account. She had been with the sister at the bank. The sister left and she was not able to get her. She further said the police had taken her sister's identity from her house on a table.

When this appeal came for hearing the appellant abandoned her appeal on conviction and pursued the one on sentence. She said she has 5 months to complete her sentence and asked the court to release her so that she could go and put into practice what she had learnt.

The state through learned state counsel Ms. Ing'ahizu did not oppose her application even though she supported the conviction and sentence as they were lawful.

This being a first appeal this Court is enjoined to re-consider and re-evaluate the evidence that was adduced in the court below and arrive at my own conclusion. I am alive to the fact that I did not see nor hear the witnesses. Ref.

1. ***OKENO VS REPUBLIC [1972] EA 32***
2. ***SIMIYU & ANOTHER VS REPUBLIC [2005] 1 KLR 192***

I have considered the submissions by the appellant and the learned state counsel. I have equally evaluated the evidence before me and come to the conclusion that:-

- (a) The cheque (EXB1) was a forged document***
- (b) The appellant was the one in possession of it and indeed presented it to PW4.***
- (c) The identity card she presented to PW4 did not belong to her.***
- (d) The appellant's intention had been to steal the money had her mission been successful.***

My finding is therefore that she was lawfully convicted and sentenced by the learned trial magistrate. She was convicted and sentenced on 20/8/2010 to 5 years imprisonment. She has served over half of these years. Remission considered she is to complete sentence within the next five months. She has asked this court to exercise leniency and order her release so that she can go and implement the lessons she has learnt while in prison. The State is not opposed to that plea. I believe she has learnt hard lessons during her period of confinement. I am therefore satisfied that she could benefit from an act of mercy by this court.

I therefore confirm the conviction and set aside the sentence of 5 years imprisonment. I substitute it with a sentence of the period already served. She will be released unless otherwise lawfully held under a separate warrant.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF JULY 2013.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Ms. Ing'ahizu for State**

**Appellant**

**Njue CC**