



**Ngugi v Republic (Criminal Appeal E003 of 2023)  
[2025] KEHC 14645 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL APPEAL E003 OF 2023  
RC RUTTO, J  
OCTOBER 15, 2025**

**BETWEEN**

**EDWARD SAMUEL NGUGI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(eing an Appeal against the judgment/Sentence in the Principal Magistrate Court at Thika  
by Honourable Dr. A. W. Wachira, in criminal Case No.2586 of 2017 on 16th October 2023)*

**JUDGMENT**

**A. Introduction**

1. The appellant being aggrieved by the decision of the trial court that convicted him of five (5) counts of: making a false document contrary to Section 357 (a) of the Penal Code, Forgery contrary to Section 349 of the Penal Code, Conspiracy to Defraud contrary to Section 317 of the Penal Code, Making a False Document contrary to Section 357 (a) of the Penal Code, and Obtaining Land Registration by False Pretence contrary to Section 320 of the Penal Code, lodged this appeal against his conviction and sentence.
2. The appeal is premised on the following summarized grounds: that no evidence was produced to prove that the accused person forged any document; that there was no document examiner's report to indicate that the signatures on the transfer documents belongs to the accused person; that no title deed, purportedly issued to the accused person, was ever produced as evidence in court and as such the title deed indicated to be canceled was never seen by the Learned Magistrate; that the Learned Magistrate converted allegations by the prosecution into evidence and proceeded to convict the accused; that no document, provided by the prosecution, linked the accused person with the allegations, save for his name that could have been used by anyone else; that the Learned Magistrate attempted to shift the burden of proof to the Appellant.



## **B. Background**

3. The appellant faced the following charges: -
  - a. Count 1- Making a false document contrary to Section 357 (a) of the Penal Code. The particulars were that on the 10<sup>th</sup> Day of June 1994 at Ruiru Sub County within Kiambu County, with intent to defraud and without lawful authority or excuse, made a certain document namely share certificate of Githunguri Constituency Ranching Company Limited, Serial Number 0622, purporting it to be a genuine document made and issued by Githunguri Constituency Ranching Company Limited.
  - b. Count 2- Forgery contrary to Section 349 of the Penal Code. The particulars were that on the 16<sup>th</sup> Day of June 1994 at Ruiru Township in Kiambu County within the Republic of Kenya, with intent to defraud, forged a Share Certificate No. 0622 purported to have been issued by Githunguri Constituency of Bernard Gachii Kamau for Land Parcel Number Ruiru Kiu Block 2/Githunguri/3758 for Ballot No. 1680.
  - c. Count 3- Conspiracy to Defraud contrary to Section 317 of the Penal Code. The particulars were that on the 10<sup>th</sup> Day of June 1994 at Ruiru Township in Kiambu County, jointly with others not before this court, by means of forging a certain document namely share certificate of Githunguri Constituency Limited serial number 0622 purporting it to be a genuine document made and issued by Githunguri Constituency Ranching Company Limited.
  - d. Count 4- Making a False Document contrary to Section 357 (a) of the Penal Code. The particulars were that on the 10<sup>th</sup> Day of June 1994, with intent to defraud and without lawful authority or excuse, made a certain document namely Githunguri Constituency Ranching Company Ballot Register purporting it to be genuine Ballot register made by Githunguri Constituency Ranching Company Limited knowing it to be a false document.
  - e. Count 5- Obtaining Land Registration by False Pretence contrary to Section 320 of the Penal Code. The particulars were that on the 10<sup>th</sup> Day of January 2005 at Thika District Lands Office in Thika Township in Kiambu County, jointly with others not before this court, he willfully procured for the registration of land parcel number Ruiru Kiu Block 2/Githunguri/3758 for ballot No. 168 by falsely pretending that it had been transferred to him by the owner, Bernard Gachii Kamau.
4. The appellant pleaded not guilty to all the charges and to prove its case, the prosecution called 7 witnesses. Upon being placed on his defence the Appellant gave unsworn evidence and called no witnesses.

## **C. The Prosecution's case**

5. PW1, Margaret Njeri Kamau, a farmer from Ithanga and wife of the late Kamau Gachie (the alleged owner of the land in issue), testified that in 1968 her husband purchased 1¼ acres of land, Serial Number 2149, at Gatongora area from Githunguri Ranching. That her husband, who passed away in 1973, was the registered owner until his death. His death certificate, Serial No. 05111189, was produced as PExh.1, while Share Certificate No. 2149 was produced as PExh.2. She stated that after her husband's death, she balloted on behalf of her son, Bernard Gachie, who was then abroad, and was given Ballot No. 1666 in respect of Land No. 3345. Upon visiting the ground, however, she found that the land had already been developed and that someone had even been buried there. She returned



- to Githunguri and was allocated Ballot No. 1680 for Land No. 3758, which had earlier been rejected by another member. Ballot No. 3345 was produced as PExh.3.
6. She testified that she was subsequently issued with Share Certificate No. 6028 in the name of Bernard Gachie, which was produced as PExh.4. She paid Kshs. 610 for the processing of the title but, having been recently widowed and with young children to care for, she did not pursue the matter further. Receipt Serial No. 88 for title processing was produced as PExh.5, while Receipt No. 1194 for Kshs.4,000, paid for clearance of Land No. 3758, indicating Share Certificate No. 6028, was produced as PExh.6.
  7. She testified that she took possession of the land by planting a live fence, later replacing it with a chain link fence, dug a borehole, and built a small house which she maintained through a farmhand. That she also paid for a survey but, on returning to the site, she discovered that her fence and beacons had been destroyed and the land subdivided into plots. She was subsequently charged by Githunguri Ranching with removing beacons. PW1 added that she had not yet received the title deed, as she had not cleared the balance of the payments, though she intended to do so once the case was concluded. A later search she conducted, supported by Receipt No. 3758 dated 26th February 2009 and the corresponding search certificate produced as PExh.7, revealed that the land was registered in the name of one Peter Muigai Nganga. She concluded by stating that she had never known the accused before court.
  8. On cross-examination, PW1 confirmed that she was the second wife of the late Kamau Gachie, having married him in 1964, while his first wife, Mary Wairimu, had married him in 1959 and had six children, including one son who had been allocated land in Kijabe but was now deceased. She stated that she had four children, one of whom had since passed away, leaving three surviving children, among them a son, Bernard Gachie. She produced the death certificate of her late husband, who died on 25th September 1973, and also availed a book in which he had written his will, bequeathing the parcel of land in question to their son, Bernard Gachie. She further confirmed that there had been a Civil Case No. 879 of 2010 at the Chief Magistrate's Court in Thika over the same parcel of land, though she had not been called back to court and was unaware of the outcome of the case.
  9. During re-examination, PW1 testified that she had caused the ownership of the land in issue to be changed from her late husband's name to that of her son, and no family member had raised any objection to the change. She further stated that upon balloting at Ruiru, one who paid for an acre was allocated an additional quarter acre.
  10. PW2, Gerald Ngugi, a businessman from Ruiru, testified that in 2009 he met James Gitau Thendu, also known as "Wamugure," who instructed him to sell his land. PW2 stated that he was shown Land No. 3758 at Githunguri Block 2, which he later took a prospective customer to view. The customer declined to purchase it on account that the land was being sold using a Githunguri Ranching certificate and not a title deed. PW2 further testified that when he later went to Dexci House in Ruiru to report this to Thendu, he found him in the company of other people and overheard him saying that they were selling Githunguri Block 2/3728 to one Livingstone Kinyanjui. Thendu was drafting the agreement but, since his handwriting was poor, PW2 was asked to copy it for them. Although this was in 2009, the date was backdated to read 16th October 2004. PW2 was then requested to witness the agreement, which was marked as PExh.8, indicating Edward Samuel Ngugi as the seller and Livingstone Kinyanjui as the buyer, with Thendu and PW2 as witnesses.
  11. He added that after this meeting, Thendu, who became his friend, later called him to sell more land. On that occasion, PW2 found him with the then chairman, Mr. Kamau. He was given a copy of a land title for No. 3779 which, upon inspection, bore the number 3880 on the reverse side. When he questioned the discrepancy, he was told he was not the registrar and should proceed to sell as directed. He also



- overheard them remark that the land had previously belonged to one Gachie, and that was when PW2 discovered that Githunguri Block 2/3758 belonged to his cousin, Gachie. He informed Mr. Kamau, who assured him that Thendu would be cautioned not to sell the land without permission.
12. The Githunguri Ranching Share Certificate No. 0622 in the name of Edward Samuel Ngugi was produced as PExh.9; the agreement in Thendu's handwriting was marked as PExh.10; and the typed version of the background agreement, which PW2 witnessed Edward and Livingstone sign, was marked as PExh.11. PW2 positively identified the accused in court and testified that the accused used to supply building materials to his employer, James Gitau Thendu, at Kenyatta University.
  13. In cross-examination, PW2 confirmed that he had initially worked as a bodaboda rider before acquiring a matatu and a taxi, which he operated PSV business. He told the court that he came to know James Thendu in 2009 as a regular customer, at which time Thendu was working as a land broker. PW2 reiterated that, while at Ruiru, Thendu asked him to show a prospective buyer, Nicholas Alex Makuti, the parcel of land he was selling, but the customer declined to buy. PW2 further testified that he overheard Thendu telling Kamau, who was blind and is now deceased, that the land being sold belonged to Gachie. Later, when PW2 asked Kamau whether the land was indeed his cousin's, Kamau retrieved from his drawer a document bearing the details and address of his cousin, Kamau Gachie, P.O. Box Ithanga. PW2 told Kamau that they should desist from dealing with his cousin's land. He noted, however, that the document had been altered to read "Edward Samuel Ngugi 3758" in handwriting he recognised as Samuel's, whereas the original correct entry was "1756" in the name of Gachie Kamau. From this, he concluded that the subsequent entry was fraudulent.
  14. In re-examination, PW2 stated that he was not the person who reported the matter to the authorities and only learnt of the civil case in 2017. He further clarified that both agreements bore the date 16th October 2004 and that the buyer, seller and witnesses were the same in each. The only variance was that paragraph 6, appearing in the typed version, did not feature in his handwritten copy.
  15. PW3, Boniface Njuguna Kimani, a farmer from Ruiru and former Assistant Secretary at Githunguri Ranching Company in 1986, testified that he was tasked with receiving and filing the ballots from surveyors who subdivided the company's land and allocated parcels to members. He identified the ballot register for Githunguri Ranching Company Limited, marked as PExh.12. He stated that the first page of the register, in his handwriting, contained entry No. 1770 for Gachie Kamau, showing Ballot No. 1680 for Parcel No. 3758. That however, the second page reflected the name Edward Samuel Ngugi for Ballot No. 1680 in respect of Parcel No. 8758.
  16. In cross-examination, PW3 stated that he worked for the company from 1986 to 2002 and that he did not know the accused. He maintained that he personally made the entry of Ballot No. 1680 for Gachie Kamau on Page 1 in his own handwriting. He explained that this entry had been swapped with the initial allocation of No. 1666, as that parcel had a grave on it.
  17. In re-examination, he clarified that Parcel No. 1666 was originally allocated to the owner of 1680, while Parcel No. 1666 belonged to Gachie Kamau, and therefore a swap had been effected.
  18. PW4, No. 231671 CI Alex Mwongera, a document examiner, testified on behalf of his colleague Lianda Masiko who had examined handwriting samples submitted to the DCI Headquarters on 29th September 2017 by DCI Ruiru. The expert's findings were that the signature entered in the register in the name of Edward Samuel Njuguna was different from the known specimen signatures of Peter Kamunge.
  19. PW5, Mr. Peter Kamunge Wainaina, a businessman from Ruiru, testified that he was a director of Githunguri Constituency Ranching Company Limited, which was established in 1967. That



- as Secretary to the Board of Directors, his duties included keeping company records, handling correspondence, and signing share certificates. He testified that in 1983 the Company resolved to subdivide its land into 1¼ acre plots to be allocated to members, and surveyors, led by the Nairobi Provincial Surveyor, were engaged to carry out the work.
20. That however, in 1986 it was discovered that about 2,000 plots had been irregularly subdivided by land adjudication officers, resulting in the shifting of allocations. One such case involved Ballot No. 1666, whose owner found it already occupied and a burial conducted thereon. The Company office consequently swapped the plots and allocated Ballot No. 1680 to the complainant on 17<sup>th</sup> May 2011.
  21. PW5 further testified that the entry indicating Edward Samuel Ngugi as per PExh.9 was erroneous, since he had not signed it. He also pointed out that the postal address “P.O. Box 121-00600” indicated therein could not be genuine, as that postal code did not exist at the time. On the other hand, he stated that the entry as per PExh.4 dated 31st August 1994, which indicated Benard Gachie Kamau as the owner with the address “P.O. Box 22826” (without a postal code), was genuine, and the handwriting thereon was his.
  22. In cross-examination, PW5 confirmed that he was elected as a director in 1986 and served until 1996, during which period he was the custodian of the registers, receipts, and company seal. He reiterated that the initial subdivision in 1983 had been professionally undertaken, but a subsequent unprofessional process in 1985 caused confusion of plots, including that belonging to Gachie. He was categorical that the signature against the entry for Edward Samuel Ngugi was neither his nor that of his clerk, Boniface Njuguna, or Margaret Wanjiru Wainaina, or the Managing Director, Waiga Kamau.
  23. PW6, John Mina Mburu, testified that he was elected Chairman of Githunguri Constituency Ranching Company Limited on 12th September 2009. He testified on behalf of the other directors, confirming that the parcel of land in issue belonged to Gachie Kamau as per the company records. He stated that the signature purporting to show Edward Samuel Ngugi as the owner was an imitation of that of PW5, Peter Kamunge, who had himself disowned it. He further observed that the postal address used in the disputed entry did not exist at the material time. PW6 also disowned PExh.23, a letter purportedly written by him to the Land Registrar, Thika, requesting assistance for Benard Nganga Gachie, clarifying that it did not originate from him.
  24. In cross-examination, PW6 confirmed that the land allocated to Gachie Kamau had not been allocated to any other person, and that a survey receipt dated 4<sup>th</sup> March 1991 had been duly issued to him. He reiterated that PExh.12 was a fake, as the dispute over the land only arose in 2010 when he was already serving as chairman, whereas the person who purportedly signed it, Francis Kayieke Njoroge, had been removed from office in 2009.
  25. PW7, No. 8224 Corporal Zabloa Auch Atubua, the investigating officer, testified that on 8th August 2017, Margaret Njeri Kamau lodged a complaint that an unknown person had invaded her parcel of land, Ruiru Kiu Block 2 Githunguri/3758. She presented Share Certificate No. 6028, produced as PExh.9, issued in her son’s name, Benard Gachie Kamau, and based on Share Certificate No. 2149 which had originally been held by her late husband. PW7 stated that the disputed entry in the register purporting to allocate the land to the accused was disowned by the alleged author, Peter Kamunge. He further testified that the forged Share Certificate No. 0622 bore a postal code which did not exist at the time, as confirmed by PExh.24, a letter from the Kenya Postal Corporation. Having established from the records that the land belonged to Gachie Kamau, he arrested and charged the accused.
  26. In cross-examination, PW7 confirmed that he had personally recorded the witness statements and forwarded the disputed signatures for forensic examination. That the forensic report established that



the entry in the register and the impugned signature were forgeries, and that the authentic record indicated Gachie Kamau, father to Benard Gachie Kamau, as the rightful owner of the land.

#### **D. Defence case**

27. When placed on his defence, the accused, DW1, gave unsworn testimony and did not call any witnesses. He denied knowledge of the charges, stating that the impugned certificate was only a photocopy and did not originate from him. He maintained that he had no involvement in the alleged forgery. He further asserted that it was the prosecution which alleged that he had links with Githunguri Ranching, but clarified that the parcel of land he once held there had already been sold to one Vincent Kinyanjui. According to him, he had handed over all original documents to Vincent. He added that there were other matters concerning falsification of documents, the particulars of which he intended to annex to his submissions.
28. Upon evaluating the evidence, the trial court in its judgment delivered on 21<sup>st</sup> August 2023 found that the prosecution had proved its case against the Appellant beyond reasonable doubt and accordingly convicted him on all five counts. On Count I, the appellant was fined Kshs.200,000, in default to serve two (2) years' imprisonment. On Count II, he was fined Kshs.100,000, in default to serve one (1) year's imprisonment. On Count III, he was fined Kshs.100,000, in default to serve one (1) year's imprisonment. On Count IV, he was fined Kshs.200,000, in default to serve two (2) years' imprisonment. On Count V, he was fined Kshs.50,000, in default to serve six (6) months' imprisonment. The sentence was to run concurrently.
29. Aggrieved by the said conviction and sentences, the Appellant lodged the present appeal.

#### **E. The Appeal**

30. The appeal is as set out in the earlier paragraphs of this judgment. It was canvassed by way of written submissions. The Appellant filed submissions dated 22<sup>nd</sup> August 2024 and further submissions dated 31<sup>st</sup> October 2024. The complainant filed submissions dated 11th November 2024, while the Respondent filed its submissions dated 17<sup>th</sup> October 2024.

#### **Appellant's Submissions**

31. In his submissions, the appellant argued that the share certificate in question, dated 16<sup>th</sup> June 1994 in the name of Samuel Ngugi, referred to a transfer of Certificate No. 2038. He pointed out that the register produced by the investigating officer showed Ballot No. 1680, Parcel No. 3758, as belonging to Edward Samuel Ngugi. The Appellant further submitted that the ownership of the suit property had previously been the subject of litigation in Thika CMCC No. 879 of 2010, in which the defendant was the complainant in the present case. According to him, the court in that matter found that the defendant therein had failed to plead and prove that the title had been obtained fraudulently.
32. He placed his reliance on Republic v Director of Public Prosecutions, Judicial Review Misc. Application No. 420 of 2018, and submitted that he did not originate any of the impugned documents, which he contended emanated from officials of Githunguri Constituency Ranching Company Limited. He maintained that he neither forged nor uttered any document; that there was no evidence that the land ever belonged to the family of John Githinji, who in any event were never called as witnesses at the trial; that the documents alleged to have been forged were mere photocopies; that he never worked with Githunguri Constituency Ranching Company Limited; and that, pursuant to the decision in Thika CMCC No. 879 of 2010, the land in dispute belonged to Livingstone Kinyanjui.



33. In conclusion, the Appellant urged this Court to set aside the judgment and sentence of the trial court delivered on 16<sup>th</sup> October 2023, quash the convictions, and to order his release from custody.

### **Respondent's Submissions**

34. The Respondent identified five issues for determination, namely:
- (i) whether the prosecution proved beyond reasonable doubt the offence of making a false document contrary to section 357(1) of the Penal Code;
  - (ii) whether the prosecution proved beyond reasonable doubt the offence of forgery contrary to section 349 of the Penal Code;
  - (iii) whether the prosecution proved beyond reasonable doubt the offence of conspiracy to defraud contrary to section 317 of the Penal Code;
  - (iv) whether the prosecution proved beyond reasonable doubt the offence of making a false document contrary to section 357(a) of the Penal Code; and
  - (v) whether the prosecution proved beyond reasonable doubt the offence of obtaining land registration by false pretence contrary to section 320 of the Penal Code.
35. On the first issue, the respondent submitted that the offence under section 357 of the Penal Code is committed by the making, signing, or execution of a document, electronic record, or writing in the name of another person, without lawful authority or excuse, and with intent to defraud or deceive. It was argued that the prosecution adduced evidence establishing that the Appellant was not a bona fide member of Githunguri Ranching Company Limited, and he did not produce any claim or evidence to show that he was among the shareholders entitled to share certificates. The Respondent further submitted that it presented a witness to the fraudulent agreement who gave credible testimony on its execution, and called company officials, PW3, PW5 and PW6 who confirmed that the Appellant was not one of the members of the Ranching Company who had balloted for the suit property.
36. Additionally, the Respondent submitted that it produced the company's register of members, which demonstrated that the entry of the Appellant's name against number 0622 was a forgery, purporting to replicate entry No. 622. This was confirmed by PW2, PW3, PW5, and PW6, as well as PW4, the document examiner. The Respondent argued that although the Appellant claimed to have sold land to Livingstone Kinyanjui and handed over the original documents to him, he failed to establish how he had acquired the land in the first place, given that he was not a member of the Ranching Company. On that basis, the Respondent submitted that the trial court correctly found him guilty of making a false document contrary to section 357(a) of the Penal Code.
37. With respect to the second issue, the Respondent relied on the decision in *Sukanti Choudhury v State of Orisa*, which sets out the ingredients of the offence of forgery under section 349 of the Penal Code, namely: false making, material alteration, the capacity to defraud, legal efficacy, and intent to defraud. It was submitted that, having established that the entry in the register purporting to allocate the land in issue to the Appellant was fraudulent, the Appellant could not be said to have lawfully held the land. The Respondent argued that the only way the Appellant could have obtained the documents he claimed to use in transferring ownership to Livingstone was through falsification, as charged in Count I, and through forgery of the share certificate, as charged in Count II. The documents relied upon in the sale could not have been genuine, as confirmed by the company officials.
38. The respondent further submitted that these actions were part of a well-orchestrated scheme to defraud, falling squarely within Count III (conspiracy to defraud), Count IV (making a false



document, namely the Githunguri Ranching Company register), and Count V (fraudulently obtaining land registration for Ballot No. 1680 belonging to Benard Gachie Kamau). It was emphasized that the complainant, the widow of Gachie Kamau, testified that Ballot No. 1666 had been officially swapped with 1680 since the former parcel was already occupied and had a grave on it. That this fact was confirmed by PW3, PW5, and PW6, as well as PW2, who was an eyewitness to the fraudulent agreement. According to the Respondent, the evidence of all the prosecution witnesses was consistent and credible, and the Appellant failed to rebut or dislodge it, having not proved any initial ownership derived from membership in the company.

39. On the third issue, the Respondent submitted that the offence of conspiracy to defraud naturally flowed from the acts underlying the first two counts. It argued that the coordinated actions of the Appellant and others demonstrated a common intention to defraud, and that the offence was proved beyond reasonable doubt. The respondent further contended that this charge was not substantively challenged by the Appellant.
40. With respect to the fourth issue, the Respondent submitted that while Count I concerned Share Certificate No. 0622 purportedly issued by Githunguri Constituency Ranching Company Limited, Count IV related to the falsification of the company's ballot register. It was argued that the prosecution witnesses from the company confirmed the falsity of the entry in the ballot register, evidence which remained unchallenged by the Appellant.
41. On the final issue, the Respondent relied heavily on the testimony of PW2, an eyewitness and signatory to the fraudulent agreement purporting to transfer the land in issue to the Appellant. PW2 narrated how the transaction was executed, only to later realise that the land belonged to his cousin. The Respondent submitted that the trial court was correct in holding that the Appellant deliberately concealed his involvement in the agreement, produced as PExh.8, which nonetheless illuminated the fraudulent scheme. It was argued that the totality of the evidence left no doubt that the Appellant willfully and knowingly used falsehoods to procure registration of the property in his name, thereby satisfying the ingredients of the offence of obtaining registration by false pretence. In support of this position, the Respondent cited *Mathilda Akinyi Oware v Republic*, Cr. App. No. 12 of 1989, and *Oware v Republic* [1989] KLR 287.

### **Complainant's submissions**

42. Counsel for the complainant, Bernard Gachie Kamau, submitted that Githunguri Constituency Ranching Company Limited, being the registered owner of Ruiru/Kiu/Block 2 (hereinafter "the property"), had subdivided the land among its members through a balloting process and issued share certificates as instruments of ownership, which members would later use to process individual title deeds at the Thika Lands Office. That the Company also maintained a register of members reflecting the land allocations and corresponding share certificates. Counsel submitted that Livingstone Kinyanjui, with the assistance of the Appellant, fraudulently processed a title for the property. Believing himself to be the rightful owner, the complainant lodged a report with the police, asserting that the registration of the suit property had been procured through fraud. It was further submitted that the Appellant had executed a sale agreement over the property in favour of Livingstone Kinyanjui. Subsequent investigations by the police culminated in the charges presented before the trial court.
43. Counsel for the complainant identified two issues for determination: (i) whether the trial court erred in convicting the Appellant on each of the five counts he faced; and (ii) whether the trial court erred in convicting the Appellant pursuant to section 215 of the Criminal Procedure Code. Relying on *Okeno v Republic* [1972] EA 32, counsel invited the Court to apply three guiding principles in this appeal: first, the duty of the appellate court to reconsider and re-evaluate the evidence on the record; second,



the need to bear in mind that the trial court enjoyed the advantage of seeing and hearing the witnesses; and third, that this Court ought not to interfere with the trial court's findings merely because it might have reached a different conclusion.

44. On the first issue, complainant's counsel submitted that the prosecution had discharged the burden of proof. He pointed to PW2, who testified that he was present at a clandestine meeting in 2009 at which the impugned share certificate was prepared. That PW5 confirmed that the share certificate was not genuine and that the signature and handwriting did not belong to him; and to PW4, the document examiner, whose forensic opinion corroborated the discrepancy between the questioned entries and the authentic specimens. Counsel submitted that this cumulative evidence established falsification and supported the trial court's findings.
45. With respect to Count 4, counsel submitted that the prosecution bore the burden of demonstrating that the Appellant, without lawful authority, made or caused to be made the ballot register purporting to emanate from Githunguri Constituency Ranching Company Limited in relation to the suit property. He relied on the testimonies of PW3 and PW4, whose evidence established that the entries in the register were fraudulent and could not be attributed to the authorized company officials.
46. On Count 2, counsel cited *Caroline Wanjiku Ngugi v Republic* (Criminal Appeal No. 11 of 2013) [2015] eKLR on the elements constituting forgery. He submitted that the prosecution adduced overwhelming evidence showing that the Appellant forged a share certificate by falsely representing it as having been issued by Githunguri Constituency Ranching Company Limited, complete with a falsified handwriting and signature of the company's authorised officer, with the intent of unlawfully acquiring and transferring ownership of the suit property.
47. On the second issue, counsel noted that the Appellant did not substantiate his challenge to the conviction under section 215 of the Criminal Procedure Code. He observed that both the petition of appeal and the written submissions were silent on the particulars of that challenge. Counsel therefore urged this Court to find that, on the basis of the analysis and the trial record, the Appellant was properly convicted and sentenced under section 215.
48. In conclusion, counsel submitted that the conviction and sentence imposed by the trial court were sound in law and fact, and therefore the appeal should be dismissed with costs.

#### **Appellant's further submissions**

49. The Appellant submitted that he had never claimed to be a member of Githunguri Constituency Ranching Company Limited and that the documents relied upon by the prosecution did not emanate from him but from the company and the police. He contended that he bore no burden to prove whether or not he was a member of the company, and further argued that the register in question was not authored by him. According to the Appellant, since he neither worked at the company nor served as a police officer, it was impossible for him to have produced or altered the documents. He further submitted that no document examiner testified that he was the author of any of the impugned documents.
50. In conclusion, the Appellant urged this Court to set aside the judgment and sentence of the trial court in their entirety and order his release from custody.

#### **E. Analysis and Determination**

51. This being a first appeal, this Court has a duty to reconsider and re-evaluate the evidence adduced before the trial court and make its own independent conclusion. It should however give regard to the



fact that it has neither heard nor seen the witnesses testify. See the cases of *Pandya v R* {1957} EA 336; *Ruwalla v R* {1957} EA 570 and *Kisumu Criminal Appeal No. 28 of 2009 David Njuguna Wairimu v. Republic* [2010] eKLR where the Court of Appeal held that:

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusion on that evidence without overlooking the conclusion 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 conclusion 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.”

52. Having considered the record of appeal as well as the rival submissions by parties, the single fundamental question for determination is whether the prosecution proved the case against the Appellant, as framed in the charge sheet. In particular, did the prosecution prove that in the year 1994, the Appellant herein, Edward Samuel Ngugi, conspired with other people and forged the impugned Share Certificate No. 0622 and made a false entry in the Ballot Register of Githunguri Constituency Ranching Company, and obtained Land registration by false pretence in 2005?
53. Outrightly, I reiterate that the burden of proof always lies on the prosecution and has to be discharged to the required standard of beyond reasonable doubt. Any doubt has to be interpreted to the benefit of the accused person the appellant herein. The prosecution evidence should be water-tight as to leave the court with no other doubt and/or option but a finding of guilt. Where the prosecution evidence clouds the court’s mind and leaves issues unresolved and/or answered, that evidence is insufficient and a court must acquit.
54. It is on this firm legal basis that I proceed to re-evaluate the appeal herein. A look at the chargesheet, the charges in Counts 1, 2 and 3 centred around a Share Certificate No. 0622. In Count 1, it was alleged that it was falsely made on 10<sup>th</sup> June 1994. In count 2, that it was forged on 16<sup>th</sup> June 1994 and that in Count 3, there was conspiracy to forge the same, the conspiracy having been allegedly committed on 10<sup>th</sup> June 1994. In Count 4, it was alleged that on 10<sup>th</sup> June 1994, the Appellant made a false document being the Ballot Register. And lastly in Count 5, that on 10<sup>th</sup> January 2005, he obtained land registration by false pretence.
55. I have deliberately set out the specific dates and acts alleged as these are the facts that the prosecution set out to prove when it called its witnesses. The question is whether the prosecution witnesses proved the above acts.
56. On evaluation of the evidence of PW1 I note that she never gave any evidence touching on the Share Certificate No. 0622 that was subject of Counts 1, 2 and 3. Equally, she never testified on the Ballot Register or the alleged land registration of 10<sup>th</sup> January 2005. More importantly, PW1 stated that she never knew the accused person (Appellant herein). It is safe to say, her testimony did not implicate the Appellant or link him to any of the offences in the counts.
57. I found PW2’s testimony more crucial in this matter. He stated that he met one James Gitau Thendu a.k.a. “Wamugure”, who instructed him to sell his land for him. That he later met James Thendu at Dexci House where they were selling land to one, Livingstone Kinyanjui and Thendu was the one drafting the Sale Agreement. He stated that this was in 2009, although they back dated the agreements to read 16<sup>th</sup> October 2004. That because of his handwriting, he copied the sale Agreement for them and he together with Thendu signed as witnesses. The seller was Edward Samuel Ngugi and the buyer



was Livingstone Kinyanjui. He would later met Thendu in the company of one Kamau for more transactions.

58. Analysing pw2's testimony I find that he does not speak to any of the charges as framed in the counts. His testimony is for a transaction that happened in 2009, but which was backdated to read 2004. The Appellant was charged with acts that happened in 1994 and 2005. Further PW2 testified to the Appellant being a seller of land to one Livingstone Kinyanjui in 2009 and did not implicate him in any of the offences in the charge sheet. This Court also notes that from the testimony of PW2, it would appear that one James Gitau Thendu and a certain Kamau may have engaged in some acts of criminality involving land subject matter of this case.
59. This Court is left wondering why they were never questioned and/or treated as persons of interest. The Court wonders whether they were the perpetrators of the fraud alleged and used the Appellant as a pawn. Unfortunately, these questions will never be answered as the investigations failed. On the other hand, these questions raises doubt on the prosecution case against the Appellant in the charges he faced. I hasten to add that from his testimony, PW2 came to know Thendu in 2009, when he met the Appellant during the transaction. Consequently, his evidence was of no help to acts committed in 1994 and 2005 as stated in the charge sheet.
60. The testimonies of PW3, PW4, PW5 and PW6 fell in the same category. PW3 was the Assistant Secretary of the Raching Company from 1986 to 2002. His material testimony was that the entry at page 2 of the Ballot Register No. 1680 in respect of Parcel No. 8758 was in the name of Edward Samuel Ngugi. He stated that he did not know the said Edward Samuel Ngugi and that he only made the entry of Ballot No. 1680 for Gachie Kamau. He never testified as to who made that impugned entry and never implicated the Appellant. The Document examiner, PW4's testimony equally, does not help the matter. The sum total of his testimony was that the entry in the name of Edward Samuel Ngugi was not made by PW5, the Director of the Company. The Report did no say who made the entry and did not in any way implicate the Appellant herein.
61. PW5 was the Director of the Ranching Company and Secretary of the Board of Directors. His material testimony was that the signature on Exh.9 was not his. This testimony is para materia that of PW6 the Chairman of the Raching Company who also confirmed that signature was not that of PW5. They never implicated the Appellant in any of the offences framed in the chargesheet.
62. The last prosecution witness was the investigating officer, PW7. He states that a complaint was lodged by Margaret, PW1, that someone had invaded her land. From the totality of the prosecution evidence on record, by the time this complaint was lodged with PW7, the alleged invader was not the Appellant. Unfortunately, the investigations did not seek to unravel who the invader was. The investigating officer picked on the Appellant and focused all his investigative attention there. Unfortunately, in so doing, he failed to unravel the mystery surrounding the complaint that he had received.
63. Having thoroughly re-evaluated the evidence on record, I am unable to see the Appellant's marks in the charges that were brought against him. While the Share Certificate No. 0622 was forged as stated by the prosecution witnesses, that document was the property of the Ranching Company and so was the Ballot Register. There is no oita of evidence that the Appellant was an employee of the Company as to grant him access to the Register to make the impugned entry. There has been no evidence from the Land Registrar that in 2005, the Appellant ever sought and/or obtained any land registration by false pretence.
64. I agree with the Appellant that there was no evidence that he forged any document. I also agree that the document examiner's report never proved that he appended his signature on any of the document,



and lastly, there was no title produced to confirm and or prove that he had obtained land registration in 2005 by false pretence.

65. The upshot is that I find that the prosecution failed to prove all the charges brought against the Appellant and his conviction was unsafe. Consequently, I do set aside the Appellants conviction on all count and sentences. He shall be set at liberty unless otherwise lawfully held.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

