



REPUBLIC OF KENYA



**Republic v Karanja & another (Criminal Case 1713 of 2018)
[2023] KEMC 17 (KLR) (12 July 2023) (Judgment)**

Neutral citation: [2023] KEMC 17 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CRIMINAL CASE 1713 OF 2018
E KIMILU, SPM
JULY 12, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MARTHA WANGUI KARANJA 1ST ACCUSED

JOSEPH WAGURA KARANJA 2ND ACCUSED

JUDGMENT

1. Accused persons herein are charged with four counts as follows:

Count I: Forgery contrary to section 345 as read with section 349 of the *Penal Code*.

The particulars are that Joseph Wagura Karanja on unknown date and place within the Republic of Kenya jointly with other not before the court with intent to defraud, M/ S Busara Forest View Academy Limited of the Land Parcel Nyandarua/Oljoro Orok Salient /1343 forged a certain document to wit a transfer of shares of stock filed with the Registrar of Companies Nairobi purporting it to be a genuine and valid share of stock signed by the deceased Johannes Karanja to enable him become a director of M/S Busara Forest View Academy Limited a fact he knew to be false.

Count II: Uttering a false document contrary to section 357 (b) of the *Panel Code*.

The particulars are that Joseph Wagura Karanja on the 21st day of October 1994 at the Attorney General Office Nairobi knowingly and fraudulently uttered a forged transfer of shares or stock dated 21st October 1994 to Mary Njoki Githome, a State Counsel at the office of the Attorney General Nairobi purporting it to be a genuine share of stock or stock signed by the deceased Johannes Karanja.



Count III: Conspiracy to defraud contrary to section 317 of the [Penal Code](#).

The particulars are that Joseph Wagura Karanja and Martha Wagui Karanja on the 3rd May 2001 at Nyahururu District Land Registry within the Republic of Kenya jointly with other not before the court; with intent to defraud M/S Busara Forest View Academy Limited of its parcel of land Nyandarua/Oljoro Orok Salient /1343 conspired by means of transferring ownership to Busara Computer Point Limited without any Board Resolution.

Count IV: Obtaining Registration of Land by False Pretenses contrary to section 320 of the [Penal Code](#).

The particulars are that Joseph Wagura Karanja and Martha Wagui Karanja on the 3rd May 2001 at Nyahururu District Land Registry within the Republic of Kenya jointly with other not before the court; with intent to defraud M/S Busara Forest View Academy Limited of its parcel of land Nyandarua/Oljoro Orok Salient /1343 measuring approximately 13.3 Acres Valued at Ksh.20 million fraudulently obtained the registration of the said land parcel in the name of M/S Busara Computer Point Limited.

2. Accused persons having entered a plea of not guilty the, the prosecution summoned six (6) witnesses and relied on documentary exhibit to discharge evidentiary burden in respect of the four counts levelled against the two accused persons. At the close of the prosecution case each accused was placed on defence. In defence each accused opted to give sworn statement of defence without calling any extra witness.
3. The prosecution case is that PW2, Geoffrey Kuira the complainant herein in the year 1983 he applied for a piece of land from the Settlement Trustee from the Ministry of Agriculture and was allocated 13.4 Acres to own, occupy and use. He paid Ksh.3051/= (Refer to exhibit 6(a) & (b) and was issued with a letter of allotment dated 25/7/1984. Together with 1st accused person and Johannes Karanja (now deceased) they decided to open a private school since he was a teacher by profession. He opted to provide land together with his wife Mrs. Grace while Mr and Mrs Joseph Wagura Karanja and Martha Wagui Karanja were to do construction and the school would open. The school was to be in the name of Busara Forest View Academy (BFVA) herein referred as the "school." He effected transfer of the land from his name to the school and a charge certificate was issued as per exhibit 7 and 5. A title deed was issued in the name of Busara Forest View Academy (BFVA) on the 28/7/1994 as per exhibit 8. They eventually incorporated a company with three directors namely; Martha Wangui (one share), Geoffrey Kuira (Two shares) and Mr. Johannes Karanja (One share) as per memorandum of Association. (Exhibit 2). The school was incorporated and certificate issued as per exhibit 9. The company main business was education and they run it on trust and confidentiality but a dispute arose on the application of school finances. Mrs Karanja (2nd Accused) was made the sole signatory of the school finances. He realized that she was not performing in the intended trust and confidence. He realized misapplication of the funds with the two accused persons. PW2 decided to visit the Registrar of Companies Nairobi where he realized a partnership certificate was being used to run the school account which had ceased to operate after the incorporation.
4. The 3rd shareholder Mr. Johannes Karanja passed on 31/08/1988 as per copy of death certificate produced as exhibit 10. The remaining directors invited Doctor Joseph Wagura Karanja (1st accused) the son of the Johannes Karanja. They assigned him the role of sharing board meetings but without any substantive appointment while Martha Wangui was the secretary. 1st Accused did not have a letter of intent to be a director prior to the death of his father. The deceased wife Mrs Isabela Wanjiru was issued with a grant for the estate of Johannes Karanja (Exhibit 11). There arose internal conflict since Doctor Joseph Karanja was not the administrator of the estate of Johannes Karanja. 1st accused used to



attend directors meeting prior to the death of his father. They entered into a consent on operation of accounts but the same was not in (PW2) favour. Mrs Karanja went ahead to open a new bank account to exclude his (PW2) signature against orders granted by consent of the parties by the High Court. (Refer to exhibit 12). PW2 was later included to the bank as a signatory but Martha Wangui went ahead to open another account with KCB Nakuru.

5. In relation to the disputed transfer of share or stock (Exhibit 1), the narration is that Johannes Karanja paid Ksh.1000/= for one share. After his death there were two directors. There relations between 2nd accused and complainant was not cordial and on 29/12/1998 PW2 was dismissed from employment as the school headmaster by Mrs Karanja. A meeting was held on the 2/07/1999 after his dismissal and he was never invited (refer to minutes of the AGM held on 2/07/1999-Exhibit 13). His office was demolished and all his documents since he was not given access after dismissal.
6. On the 3/05/2001 he noted the land for the school was purchased by Busara Computer Point Limited without his involvement as per sale agreement produced as exhibit 14. Busara Computer point is owned by the accused persons. After purchase Busara Computer point was mortgaged to Equity Bank Nyahururu branch for Ksh. 60 Million on the 7/11/2013 as per the green card produced as exhibit 15. The transfer according to PW2 was illegal and he wrote to the DCI on the 21/11/2016 as per exhibit 16. According to complainant he still holds two share and has never transferred.
7. In his further testimony he stated that he intended to change his one shares for a vehicle owned by the 1st accused person in 1989. They went to the registrar of companies and it was pointed out that the minutes had several anomalies. They had valued the vehicle to a sum of Ksh.300,000/=. Each share was valued at Ksh.1,000/= and they could not have come up with Ksh.300,000/= per share and therefore the vehicle sale through share was nullified. The issue has never been resolved due to bad blood between accused person and the complainant. According to PW2 the value of the subject vehicle Nissan sunny station wagon was Ksh.270,000/= as at 15th September, 1986.
8. In June, 1984 a partnership did exist as the school operated as such up to 29th April, 1987 when the school was incorporated. The school had three directors only of four shareholding.
9. The registrar summoned the directors on the 1st February, 1996 to explain the anomalies in their file about annual returns. It was agreed returns made in the name of partnership be canceled. From the Returns it was indicated that Johannes had transferred his one share to Joseph Wagura Karanja (1st accused). They were referred to an arbitrator (Refer to exhibit 17). They began as friends but the relationship has landed them to court. He denies ever having resigned as a director.
10. In cross examination by counsel for the 1st accused, PW2 identified the transfer of land consent which he confirmed he transferred land to the school. The decision to venture into joint business was borne in the years 1983 and registered in 1984. They were three directors but he noted his name was not included in the registration despite holding two share. He also confirmed he used to minutes and identified minutes of 8/03/1988 and 7/06/1988. He minuted 1st accused as the chairman. The 1st accused used to attend board meetings on behalf of his father Johannes Karanja. It was minuted on 7/06/1988 each share was worth Ksh.300,000/=. They resolved to consult on advocate for the registration of the said resolution. The property was valued by a private valuer through 1st accused for mortgage purposes at Ksh.3,625,050/=(Capital value) and Ksh.195,000/= land value. He confirmed subsequent meetings were held and as at 11/7/1989 the shares were 16. With 1st accused being the highest shareholding of 12 shares. PW2 shareholding was minuted as one share. The nominal value of a share was Ksh.1,000/-. It was at that time PW2 converted his shareholding into a vehicle registration number KXU 075. He confirmed the land registrar Nyahururu requested MD of the school on issue of transfer of shares. The annual returns indicated the shareholding of all the directors. It was indicated Johannes



Karanja transferred his share to Joseph Wagura Karanja (1st accused). There was no transfer since the company had been incorporated on 29/4/1987. Johannes died on 31/08/1988. He stated there are other matters pending in high court between the same parties. The articles of association override board meeting minutes according to PW2. According to PW2, his wife contributed Ksh.10,000/= towards the company but the registrar nullified their minutes because of several anomalies. He was dismissed from employment on 29/12/1998 and left office on 19/01/1999. Mr. Sichangi was appointed as the company secretary. As per meeting of 1/12/1999. He never received any letter for invitation for a board meeting. He was physically evicted from the school by people send by the accused persons. A board meeting could not be held since the company was left with one director. On 18/10/1994 they went to the registrar of Births and death. He was surprised the partnership went on to operate after incorporation. Partnership had died on 29/04/1987. The shareholding had been nullified as at 2016 by the orders of the High Court.

11. In cross examination by counsel for the 2nd accused, to the best of his understating PW2 is still a director on the school which is a company and had all rights to lodge complaint. According to PW2 the perpetrators of the fraud could not have raised any issue. There could not have been any resolution to lodge the complaint. He is the majority shareholder of the said company which operates a school business. He confirmed they had other cases pending determination in High Court over the same company. He confirmed he received a consideration of Ksh.65,000/= to transfer the company. (Refer to transfer of land Exhibit 7). He was the secretary and took minutes during board meetings. It was his testimony that the existing shares of the company are now at 16 shares with 1st accused being the highest shareholder at 16 shares. He converted his share to tangible property which was a vehicle. (Refer to exhibit 17). That Busara Forest view Academy and Busara Computer Point are limited companies. In 1989 he signed and filed the company annual returns. The shareholding is as per CR12 minus one share for Johannes Karanja. In minute 4 /1999 it was acknowledged they had done a mistake since the shares ought to remain at 4. According to PW2, 1st accused has not attained status of becoming a director in the company. He came in as a proxy of his late father. There is no record of his appointment as a director. He was allowed in the meetings out of trust and good faith and confidentiality. Johannes Karanja was among the initial subscriber. After dropping his school responsibility, he did not relinquish his director role and shareholding. The redistribution of shares was cancelled by the registrar of company. He denies knowledge of any meeting convened by Mr. Sichangi & Co. Advocates. He learned that in the said meeting it was observed he had ceased to be a director since 2/7/1999. The meeting was held in Nyeri without his knowledge. In any case he had been dismissed from employment and had no means.
12. In re-examination he reiterates that the change of value of share was an anomaly and since they had not sought for consent from the registrar of companies. All what they done was changed during the meeting held on the 15/07/1992 at the Registrar officer. They changed shareholding without legal advice and hence the reversal of several of the minutes. He admits he has used the vehicle but cannot tell the value because they have never sat with Mr. Karanja to discuss the issue. Mr. Johannes never handed over to other directors' letter of intent in respect of 1st accused to join as a director. As at the time of death of Johannes Karanja the 1st accused was not a director.
13. In the course of the investigations the I/O subjected documents to a forensic analysis. Mr Alex Mwongera testified as PW1 that he received exhibits for examination which included a copy of transfer of share of stock containing the questioned signature pointed by a red arrow and a certified Memorandum and articles of Association containing the known signatures of the late Johannes Karanja pointed by a blue ink arrow. In his examination he formed an opinion that the signatures were not made by the same author. He produced his report as exhibit 4.



14. PW3, Kiruki Mirithi an auditor by profession testified that Busara Forest View Academy (BFVA) was initially a partnership between the two accused persons and the complainant (Geoffrey Ngari Kuira-PW2). In the year 1985 Mr. Joseph Karanja resigned as per notice of change Form BN/4 filed at the registrar office. He therefore ceased to be a partner as at 1.1.1885. (Refer to Exhibit 19 and 19). On the 29/4/1987 the partnership was incorporated by three members. He presented the money order from Nyahururu to the office of the Registrar Nairobi. The incorporated company was by shareholding. Martha Wangui (2nd accused) and Johannes Karanja each had one share while Geoffrey Ngari Kuira held two shares. He presented the required documents for purposes of incorporation of the limited liability company. In 1988, the company become uncooperative but 2nd accused despite receiving letter of concern to address the issue and file annual returns, she did not respond to the same. He opted to pull out the company as their secretary. His evidence is that there was no change of directorship. The company had three directors who were the initial subscribers.
15. In cross examination PW3 confirms 1st accused is a son to Johannes Karanja. He is an auditor and accountant by profession. Their firm was appointed to act as by the three partners. On 1/1/1985 Mr. Joseph Karanja approached him to make changes and he left documents with him. He confirmed the initial business name was “Busara Forest View Academy” between three partners namely Martha Karanja, Johannes Karanja and Geoffrey Kuira but the name of Geoffrey Kuira was missing from the partnership. He stopped working for BFVA in the year 1988 and resigned officially on 2/4/1991. He cannot what happened to the company after his resignation. To the best of his knowledge is that Geoffrey Kuira donated land as the capital share value to the partnership that was later incorporated as a company limited by shares. Later Geoffrey was paid Ksh.65,000/= as consideration of the land. There were no documents to indicate the partnership was between four partners. He did not know Joseph Karanja was and is a director of BFVA. He never interacted with Mr. Johannes Karanja.
16. PW4 Ayeda Charles Morara a land registrar Nyahururu /Samburu County testified he has an experience of 14 years. He outlined his duties and roles as a land registrar. He testified that land reference no Nyandarau/ Olo Ojorok Salient/1343 measuring approximately 13.43 Acres (5.4 Ha) initial registration was under Settlement Fund Trustee. Later it was discharged on 28/07/1994 and transferred to BFVA. A title deed was issued by subsequently cancelled as per the Green Card Entry. On the 3/05/2001 it was issued and transferred to Busara Computer Point Limited. On the 13/02/2013 the land was charged. On 11/11/2015 caution was registered by Geoffrey Kuria. The charge on the said title deed was to secure a loan with Equity Bank of Ksh.60 Million. The copy of the green card was produced as exhibit 16 and correspondence from DCI. The transfer was effected by the directors of the company and nothing was wrong with the same. According to PW4 a property worth Ksh.20 m cannot secure a charge of Ksh. 60 M.
17. PW5 Mary Njoki Njuya Alias Mary Njoki Githiome testified that she was an employee in the office of the Attorney General since the year 1986 until 2021 when she attained her retirement age. She retired as a Deputy Solicitor General/Registrar General at the AG Office. That during her employment around 1984 while in the office of the Public Trustee she lived in Langata and had a neighbor and friend by the name of Martha Mumbi who introduced to her Mrs Karanja (2nd Accused). Mrs Karanja wanted to start a school in Nyahururu and requested her services to register the same. She referred her to another friend by the name of Nyakio Ndwiga & Co Advocates. She registered a limited liability company in the name of BFVA. Nyahururu- Laikipia County. Out the good relationship with Mrs. Karanja, she approached when she wanted to transfer some share in the same company. The three directors visited her officer at the AG and after a cordial discussion they gave instructions on shareholding. She transferred one share of Johannes Karanja to Doctor Joseph Karanja (1st accused). She changed the shareholding in the presence of the directors and they all signed. At the time of the transfer of shares



Johannes Karanja was elderly and sickling. After several years she was called to explain about the transfer of the shares. She learned that when she was executing the transfer Johannes Karanja had already died many years ago which fact was not disclosed to her. She identified the said transfer and produced the same as exhibit 1. Although she insisted Johannes Karanja to be availed they insisted he was unwell and casually allowed Joseph Karanja to sign the transfer on his behalf. She submitted the transfer to the lands officer.

18. In cross examination she confirmed that there being no complaint the transfer was effected. According to her there was no falsehood in the transfer of the shares and exhibit 1 could not be a forgery. She did not have the mother file on the said company. She could not know whether there were documents missing. It was her evidence since inception Dr. Karanja was a shareholder. She learned Mr. Kuira had lodged a complaint on the transfer of the shares.
19. PW6, Chief Inspector of Police Winnie Ingaiza testified as investigating officer in this case. She was assigned the case after Mr. Geoffrey Kuira lodged a complaint on 21/11/2016. The circumstances surrounding the complaint was about a fraudulent / forged title deed of Nyandarua/OlJOROK Salient /1343 owned by BFVA Limited. He alleged that the title deed was changed to Busara Computer point Limited. The complainant stated that he was allocated the said land by Settlement Trust Fund and paid the necessary due into two instalments as per exhibit 6 (a & b). Upon payment he applied for consent and got the same on the 13/01/1988. Before the transfer of the land could be effected he incorporated a company with Johannes Karanja (one share) and Martha Karanja (one share) while he held two shares. The company was incorporated on the 26/01/1987 as per certificate of incorporation no. C34428 (Exhibit 9). The land Nyandarua/OlJOROK Salient /1343 was transferred to BFVA directly as per the transfer and title deed produced as exhibit 7 and 8. The I/O wrote District Land Registrar Nyahururu to confirm the history of the land in question (Refer to Exhibit 22). She was issued with the Green Card of the said land which indicates issuance and cancellation and encumbrance section. The land is now charged with Equity Bank for Ksh.60,000,000/= in favour of Busara Computer Point. The complainant registered a caution on the same land. (Refer to the Green Card Exhibit 15). She also wrote to Nyahururu Land Settlement office on the 8/12/2016 but the same was never replied to.
20. In her investigation the, the I/O through the complainants was able to establish the disputed transfers of shares dated 21/4/1994 (Exhibit 1) gave 1st accused full access to the company. 1st accused transferred one share belonging to Johannes Karanja to himself irregularly since the shareholder and long dead. She reached out to Mrs. Njuya Advocate who confirmed that she attested the transfer of share on 21/10/1994.
21. She established from the Registrar of Companies that Busara Computer point Limited was registered 15/07/1997 under C77125 and last Annuls Returns were filed on the 9/9/2009 indicating accused persons as the shareholders each holding one share. BFVA was registered on 29/04/1987 under C34428 and the last annual returns were filed on 31/12/2009 with three shareholders who are Martha Karanja (3 shares), Joseph Wangura Karanja (12 shares) and Geoffrey Ngari Kuira (1 share) as per exhibit 23. The CR12 was computer generated since the original file was missing. She integrated accused person and 1st accused claimed he inherited his share from his deceased father. They also gave the I/O an agreement for the transfer of company from BFVA to Busara Computer Point Limited which she produced as exhibit 14. The complainant was not aware of agreement produced as exhibit 14. The 1st accused also gave a death certificate of Johannes Karanja (refer to exhibit 10) and the death was confirmed as per exhibit 25. The company secretary (PW3) confirmed initial shareholders were Geoffrey Kuira, Martha and Johannes Karanja. He did not know holder 1st accused become a shareholder. She also established that the land in question was charged at Ksh. 60 M with Equity Bank. The share in dispute was to be inherited by Johannes wife Isabellah Wanjiru Karanja as per



- the succession cause no. 124/1995 (Refer to exhibit 11). The complainant was chased away by the accused persons from the school where he worked as a teacher. Accused persons had minutes to show complainant had ceased to be a director of the said company (Exhibit 13). The complainant moved to High Court and lodged a case against the two accused persons and the court ordered existing accounts to be closed and new accounts be opened and deposits be transferred to the new accounts with signatories being two directors. (Exhibit 12).
22. The issue at hand was transfer of share of stock produced as exhibit. The disputed share was subjected to forensic examination to confirm whether it was signed by the late Johannes Karanja. PW1 confirmed that the said transfer was not signed by the late Johannes Karanja. She charged 1st accused person with Forgery and uttering false document. As at 21/10/1994 Johannes Karanja had already passed on. At the time Mary Njuya was attesting to the transfer, both accused and complainant were present. 1st accused signed transfer on behalf of his father who had long died. The two accused person conspired to defraud complainant and kicked him out of the school and company and transferred the property of BFVA to Busara Computer Point Limited and charged the property. Accused person claimed the complainant did not have any land in the first place. The complainant was alleged to have converted his share with a car owned by the 1st accused. It was not clear how the transfer was done.
23. In cross examination by counsel for the 1st accused, I/O confirmed she never got the original file from the Registrar of Companies. According to I/O the disputed charge was prepared by Mrs. Njuya (PW5) and not presented to her by the 1st accused person. By signing document on behalf of a deceased person would amount to forgery. It was not disclosed that as at 21/10/1994 the 1st accused was a director prior to the transfer. The file went missing and could not be established when 1st accused become a director even with a search. She was never given the minute book but parties agreed complainant converted one share with a vehicle and remained with one share. Each share was valued at Ksh.300,000/=. From the minutes of 11/7/1988 1st accused was the majority shareholder of 12 shares out of 16 with complainant still holding one share. Johannes Karanja died on 31/08/1988. The complainant was the secretary. She testified that the title deed of the property in question is registered in the name of Busara Computer Point Limited. The land belonged to the complainant before the partnership. Geoffrey Kuira was given Kshs.65,000/= for the land by BFVA.
24. In further cross examination by the counsel for the 2nd accused, she testified that the particulars of the offence indicate the victim of the offence as BFVA Limited but the complainant is Geoffrey Kuira. The 1st action of signing the transfer amounted to forgery and uttering a false document to M.N Njuya. BFVA limited did not lodge any complainant. The land history as per the Green Card does not mention the complainant. She admits only the High Court can determine on the issue of directorship. The I/O estimated the value of the land as Ksh.20 M. Accused gave her wrong information on the signing of the transfer of shares.
25. In his sworn defence, the 1st accused Joseph Wangura Karanja testified that he is a businessman in Nyahururu and denies the charges levelled against him. He testified that he is a director and a shareholder with BFVA Limited since inception. The said company was incorporated on 29/04/1987 after an initial partnership. The directors were himself and his wife Mrs. Karanja and Mr. Geoffrey Kuira. The late Johannes Karanja was his father who held a share on his behalf. That on the 14/5/1989 they held a company meeting and in minute 4/1989 of 11/7/1989 on shareholding and he was the majority shareholder at 12 shares out of 16 share in the company. The complainant was the minority shareholder at one share while 2nd accused held three shares. He stated that the complainant transferred one share to him by converting the share to a tangible asset consideration of a motor vehicle registration number KXU 075. 1st accused got back his share from Johannes Karanja which he transferred on the 1/5/1987. The same was declared during annual returns of 1988 and 1989. (D. Exhibit 1& 2). The



annual returns were signed by the Martha and Geoffrey Kuira confirming the shareholding. Johannes passed on 31/08/1988 and by the time he passed on he had already transferred the share to him. Exhibit 1 was prepared at the A.G Chambers on 21/10/1994. The same is transferring one share from Johannes to himself. Geoffrey Kuira informed them the file was missing at the Registrar of companies and they needed to reconstruct. The registrar needed all document and details for reconstruction. The transfer of shares was done at the registrar's officer from Johannes Karanja to Mr. Joseph Karanja and from Mr. Geoffrey Kuira to Joseph Karanja. The registrar filed all the details and gave him to sign. He denies having represented himself as Johannes Karanja. They went to the Registrar's office twice on 18th and 21st October, 1994. The transfer was done on the 21/10/1994 and therefore exhibit 1 cannot be said to have been prepared at unknown place and date. He denies having presented the same since it was prepared by Mrs. Njuya. He produced transfer of shares between Kuira and himself. He produced directors meeting minutes where the complainant was the secretary and prepared the minutes. The values of one share was agreed to be Ksh.300,000/- as per D. Exhibit 4. The land where BFVA is developed was purchased from Settlement scheme and the same is owned by three directors with 1st accused holding 93% shares. The land was subsequently purchased by Busara Computer Point Limited as per resolutions of the Board of Directors on 6/3/2001 as per D. Exhibit 5. The land was valued at Ksh25M before the transfer a per D. Exhibit 6 but Mr. Kuira was not in attendance. The complainant was claiming he had suffered frustrations and went to High Court to file a case as per exhibit 7. He denies allegations of obtaining by false pretences since all decisions were by way of Board Resolutions. No resolutions were passed on prosecution of the directors. The complainant declined to attend meetings of the directors and they brought in Sichangi Advocates to convene the meeting in his officer. (Refer to exhibit 8 a & b)

26. In cross examination, by counsel for the first accused he reiterated his testimony in chief. He denies charge as leveled against him. He confirms that the transfer of shares of stock is a genuine certificate. He actually signed the same in the presence of the parties concerned and the Registrar Mrs. Njuya. She had assisted in the incorporation of company and she knew Johannes Karanja very well. The documents were left with the Registrar for action. According to 1st accused two directors could quorum for decision making. He denies any intentions to defraud any all the decision made and acted own by her fellow director. In regard to the High Court matter, the issue of fraud transfer had been raised for determination. The complainant did not have any authority from the company to lodge any complainant. The land in question is 5.4 Acres. The disputed document was prepared for the purposes of reconstruction of the file at the office of the registrar. The transfer had been done long before.
27. In cross examination by the prosecution, 1st accused person stated the BFVA is still in existence. The school is o property Nyandaruan Oljorok Salient 1343. Initially the land belonged to Settlement Fund Scheme. Geoffrey Kuira was the allottee. The title was issued in the name of BFVA in 1994. He was not among the directors of BFVA in 1987 but his father Johannes Karanja was holding one share on his trust. The Memo and Articles do not show the right position of shareholding according to the 1st accused. The minutes show all that was agreed upon. He claims he was the investor and propriety of the Academy. He gave out all the monies for the construction of the school. Martha Wangui was the academy manager while Geoffrey Kuira contributed the land. Each was to contribute Ksh. 50,000/= but Kuira did not have any cash money and they agreed to value the land at Ksh.65,000/= which would be Kuira's contribution. They were all present at the A.G Chambers when the transfer produced as exhibit 1 was done in 1994. Johannes was not present at the A.G Chambers having passed on in 1988. He has been transferred for the share on the 1/05/1987. The transfer happened without any resolution. In reexamination he reaffirmed his testimony.
28. In her sworn defence, the 2nd accused testified that she is a director of BFVA which position she has held since inception. Prior to incorporation BFVA was a partnership where the partners were



herself and Joseph Wangura Karanja. The transfer indicates Geoffrey paid Ksh 65,000/= which was for the partnership. A motor vehicle KXU 075 was exchanged for one share to Joseph Karanja. The complainant confirmed the said position in his further statement. The other transfer to Karanja was from his father Johannes Karanja. The transfer of Johannes Karanja share was done at the AG chambers by Mrs. Njuya in the presence of the complainant. This was for the purpose of reconstruction of the file at the AG chambers. Mrs. Njuya had helped in the incorporation of the company. Mrs. Njuya knew Johannes prior to his demise, Mr. Joseph Karanja was the chairman while Kuira was the secretary. Johannes never nominated a proxy to attend meetings on his behalf. Johannes had one share. The disputed transfer (Exhibit no.1) was left with Mrs. Njuya in her office. The complainant claimed he had suffered frustration and withdrew attending director's meetings.

29. In cross examination by counsel for the 1st accused, 2nd accused confirmed that at the time of registration Johannes was a shareholder but he used to stand in for Joseph Karanja. The share was eventually transferred to Joseph Karanja as per returns for the year 1989. The board of director coram was agreed to be two directors. All decisions were made by Coram including the sale of BFVA to Busara Computer Point. The signing of the disputed document was by agreement of all the directors before Mrs. Njuya. According to 2nd accused BFVA has not been defrauded.
30. In cross examination by prosecution counsel, 2nd accused confirmed initially they begun as a partnership. The company was incorporated as a school where she was the manager and the complainant was a teacher. The 1st accused was a partner but absent mostly. In the partnership Kuira's name was not appearing since he was working with ministry. Johannes name was thus included in the partnership. Johannes later transferred his share to Joseph Karanja. The transfer forms were kept by the complainant since he was the secretary. The documents were kept in the office. Currently Kuira is not a director of BFVA.
31. I have carefully and keenly evaluated both defence and prosecution evidence on record. I have also considered the defence submissions on record. It is not in dispute that the accused person and the complainant are directors of BFVA. Initially 1st accused name was not a director but his father Johannes Karanja now deceased was a director. They operated as such for a couple of years since incorporation in the year 1987 after beginning as a partnership. At the time of incorporation there were three directors namely Martha Wangui Karanja (2nd accused), Geoffrey Ngari Kuira (Complainant) and Johannes Karanja (now deceased) with shareholding of 1:2:1 respectively (Refer to exhibit 2). It is in admission that in the partnership the complainant name was not included but he as a partner. The defence evidence is that Johannes Karanja hold one share in trust for the 1st accused and he transferred the same before his death. It is the evidence of both defence and prosecution that on the 21st day of October, 1994 they all went to the officer of Attorney General for purposes of reconstruction of the file at the Registrar. The disputed transfer produced as prosecution exhibit 1 and (also) defence exhibit 4 was executed in the presence of Mrs. Njuya (PW5). A transfer between the complainant and the 1st accused was also executed as per defence exhibit 5. It is in admission that the disputed transfer was signed by Joseph Karanja (1st accused) in behalf of Johannes Karanja who had died on the 31st day of August, 1988 as per exhibit 10. The document examiner report produced by PW1 as exhibit 4 is therefore not disputed. In the year 2016, the complainant through a letter dated 21/11/2016, he wrote to the DCI for investigations of the two accused persons for charges of fraud and forgery. Further, he raised with the DCI that the two accused persons decided to transfer the school/company (BFVA) to themselves via Busara Computer Point Limited. Having heard the parties in this case I must state that they long history engulfed into court battles as pertains the School/company (BFVA) and Busara Computer Point Limited ranging for over twenty years but the court shall be limited into making a



decision on the issues raised in the charge sheet dated 21/03/2022 although the case was presented in court on the 13/9/2018.

32. Out of the letter dated 21/11/2016, accused persons were charged with forgery, uttering false document (1st accused) and jointly with conspiracy and obtaining registration of land by false pretence.
33. The first issue for determination is therefore whether the prosecution has proved beyond reasonable doubt the charge of Forgery contrary to section 345 as read with section 349 of the Penal Code as per Charge 1 as against 1st accused.

Section 345. Definition of forgery

Forgery is the making of a false document with intent to defraud or to deceive.

34. Phillimore L.J broke down the definition of forgery in *R v Dodge and Harris* [1971] 2 All ER 1523 as:

“A document is false... if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it or authorize its making ... or if, though made by or on behalf of or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, ... is falsely stated therein; and in particular a document is false:- (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.”

35. The Court of Appeal in *Joseph Mukuba Kimani v Republic* (Criminal Appeal No. 76 of 83) [1984] eKLR held:

“The prosecution must prove that:

- (a) the document was false; in the sense that, it was forged
- (b) the accused knew it was forged
- (c) the utterer intended to defraud.

36. In the case of *Kilee V Republic* [1967] EA 713 at p 717, it was said that,

the false document must tell a lie about itself and not about the maker. We think the position is better put, by stating that, the false document is forged if it is made to be used as genuine. To defraud is, by deceit, to induce a course of action: *Omar Bin Salem v R* [1950] 17 EACA 158, and to defraud, is not confined to the idea of depriving a man by deceit of some economic advantage or inflicting upon him some economic loss, see *Samuel V Republic* [1968] 1.”

37. Mativo J in *Caroline Wanjiku Ngugi v Republic* [2015] eKLR held that:

“Forgery is the false making or material alteration of a writing, where the writing has the apparent ability to defraud and is of apparent legal efficacy with the intent to defraud. Thus the elements of forgery are:-



- i. False making of – The person must have taken paper and ink and created a false document from scratch. Forgery is limited to documents. “Writing” includes anything handwritten, type written, computer generated or engraved.
- ii. Material alteration – the person must have taken a genuine document and changed it in some significant way. It is meant to cover situations involving false signatures or improperly filling in blanks on a form or altering the genuine contents of the document.
- iii. Ability to defraud – The document or writing has to look genuine enough to qualify as having ability to mislead others to think its genuine.
- iv. Legal efficacy – the document or writing has to have some legal significance.
- v. Intent to defraud – the specific state of mind for forgery does not require intent to steal but only intent to fool people. The person must have intended that other people regard something false as genuine. A forgery may be committed either by handwriting, through the use of type writer or a computer.”

38. In the case at hand the its alleged.... “that Joseph Wagura Karanja on unknown date and place within the Republic of Kenya jointly with other not before the court with intent to defraud, M/S Busara Forest View Academy Limited of the Land Parcel Nyandarua/Oljoro Orok Salient /1343 forged a certain document to wit a transfer of shares of stock filed with the Registrar of Companies Nairobi purporting it to be a genuine and valid share of stock signed by the deceased Johannes Karanja to enable him become a director of M/S Busara Forest View Academy Limited a fact he knew to be false.”
39. The court was told by both the prosecution and the defence that the disputed transfer of share of stock produced as exhibit no. was prepared on the 21/10/1994 in the officer of Mrs. Njuya (PW5) in the presence all the parties. It is therefore without doubt that the same could not have been prepared at a place unknown as per the particulars of the charge. The prosecution evidence is that the land in question was initially allocated to Geoffrey Kuira (complainant) and on the 11th January, 1986 Geoffrey Kuira transferred the same to BFVA as per the transfer produced as exhibit no.7 and a title deed was issued on the 20th July 1994 (Refer to title deed and the Green Card produced as exhibit 8 & 15). The prosecution went further to produce as exhibit the Memorandum and Articles of Association of BFVA (exhibit 2) and the same outlined the objects of the company limited by shares. They are so broad ranging from “operation of academytraining schools.....computer training Centrepurchase of part of the worldto sell, lease, mortgage , or otherwise dispose of the property, assets, or undertaking of the company or any part thereof , for such consideration as the company may think fit , and in particular for shares, stock, debentures, or other securities of any other company whether or not having objects altogether or in part similar to those of the company. Further shares may be transferred by a member or other person entitled to transfer to any member selected by the transferorno share shall be transferred to a person who is not a member so long as any member is willing to purchase the same at the fair value.....”
40. With the above understanding and knowing very well the issue around the trial revolved within the *Company Act*, the court cannot make a sound decision with a mention of the above. The court is guided by the documents produced by the parties. From the Annual Returns filed in the year 1988 and 1989 the two accused person and the complainants are listed as directors/ shareholders. It is therefore the finding of the court that the disputed transfer of share signed in 1994 could not have been aimed of conferring the 1st accused directorship. The records indicate he was a director prior. The particular of charge one is inconsistent and at variance with the oral and documentary evidence adduced by



the prosecution. It must be pointed out the complainant and the late Johannes were guided by the Memorandum and Articles on the transfer of share to 1st accused and minutes of the meeting held on 7/06/1988(MIN.10/88) and (MIN.4/1989) produced as defence exhibit 6.

41. The disputed document was made in the absence of Johannes Karanja but with the consent of the accused person and the complainant. It cannot be said to be a false document in the sense that the parties seemed to have resolved in the presence of their advocate Mrs. Njuya to have the same executed for purposes of reconstruction of their file at the Registrar of Companies. 1st accused signed on behalf of his late father. The intention to defraud has not been established neither does the court find the same was made to confer the 1st accused directorship status to BFVA. A transfer of shares does not enable one to become a director of BFVA. The property ownership never changed by the signing of the said transfer of share on the 21/10/1994 since documents produced indicate 1st accused was already a director and therefore count 1 must fail.
42. The transfer of share of stock having been prepared by Mrs. Njuya in her office in the presence of all the directors the same was left behind in her office for her to file at the lands officer. The complainant did not raise any objection to the proceeding at Mrs. Njuya's office since he was the secretary in the company and had found out the documents were missing in the file. It is not the accused who came up with the reconstruction of the file by filing fresh document. Accused persons were correctly guided by the complainant and Mrs. Njuya found a resolution and that is why she assisted them. The offence of uttering a false document (Exhibit 1) therefore does not arise on the strength of the evidence on record by all the parties. The evidence on record fails to demonstrate the intention to defraud. In any case the family of the late Johannes Karanja did file a succession cause in Nyeri High Court as per certificate of confirmation of grant dated 14/04/1999. Busara Forest View Academy was not listed as part of the estate neither did 1st accused got any share in the estate. The family of Johannes who has capacity to raise issue regard his estate have not raised any in the case at hand.
43. The two accused person are charged with conspiracy to defraud BFVA of its land parcel Nyandarua/Oljoro Orok Salient /1343 by transferring ownership to Busara Computer Point Limited without any Resolutions. The particular of charge 3 indicate BFVA as the complainant. Superior courts have made binding decision to the issue of directors instituting legal proceeding against each other. The defence relied on a decision by Justice J. B. HAVELOCK in the case of *Kenya Commercial Bank Limited v Stage Coach Management Ltd* [2014] eKLR where the court cited with approval decision in Petition No. 600 of 2013 *East African Portland Cement Ltd v The Capital Markets Authority & 5 Others* in which the Ugandan case of *Bugerere Coffee Growers Ltd v Seraduka & Anor.*(1970) EA 147 had been referred to and in which it had been held in dismissing the suit:

“When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of Directors’ meeting and recorded in the minutes, but no resolution had been passed authorizing the proceedings in this case

44. *Kenya Commercial Bank Limited*(*Supra*) the court further restated the general position again while relying upon the case of *Leo Investment ltd vs Trident Insurance Company Limited* (2014) eKLR that only directors can sanction a suit

“It is settled law that where a suit is to be instituted for and on behalf of a company there should be a company resolution to that effect..... As regards litigation by an incorporated



company, the directors are as a rule, the persons who have the authority to act for the company

45. This company here had only three directors who have been embroiled in legal battles since 2013 to date. There could not have been any resolution to lodge the same although Arbitration would have been the best way to resolve several issue at hand. the complainant did not make any mistake in lodging complaints as against the accused person since he felt that their actions were fraudulent as held in *Musa Misango Vs- Eric Musigire and others* (1966) E.A: 390 in which it was held, *inter alia*, that a member of a company can bring proceedings when the acts complained of injure him or are either fraudulent or ultra vires. The court also, on application of the plaintiff, granted leave to join the company as a defendant.

46. The two are alleged to have conspired to defraud. The prosecution role in an offence of conspiracy is to prove an agreement between two or more persons to defraud a person by deceit or any fraudulent means. As stated in *Archi Bolds Criminal Pleadings, Evidence and Practice* 2010 (Sweet and Maxwell) at page 3025 and 3026, it is observed as follows;-

“The offence of conspiracy cannot exist without an agreement consent or combination of two or more persons.....so long as a design rests in intention onus, it is not indictable, there must be agreement.

The agreement may be proved in the usual way or by proving circumstances from which the jury may presume it.....proof of the existence of a conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused done in pursuance of an apparent criminal purpose in common between them”

47. In *Christopher Wafula Makholia versus Republic* (2014) eKLR, Justice Mabeya held that a charge of conspiracy to defraud must involve two or more persons and not a single accused person.

48. In the case at where Busara Computer Point Limited is alleged to have defrauded BFVA. As earlier pointed out when the land in question was transferred to BFVA the same was absolute transfer and sale by the complainant as per the land control Board Consent (marked but not produced as an exhibit by either party) and the minutes of the meeting held on 6/3/2001. It has been admitted that the complainant herein was the secretary of BFVA and he used to take minutes as per the Management Minute Book produced as defence exhibit 6. The Memorandum and Articles as earlier pointed out indicate that proceedings at general meetings shall be properly convened by a quorum. This meant that in the absence of the complainant the two accused person met and made resolutions. In a board meeting held on 6/03/2001 at Nyeri it was resolved that Busara Computer Point Limited fully owned by the accused person has purchased Busara Forest View Academy (BFVA) Limited (Refer to Memorandum and Articles of Association paragraph rr-page 7). The minutes were taken by M.G Sichangi where it was noted the complainant had been absent on several occasions and business of the company had to be carried out without interruptions. (Refer to Defence Exhibit 8). The complainant testimony was that he was frustrated and decided not to participate in any board meetings. This being a company limited by shares decision are made by resolutions. The complainant alone therefore could not make any resolution to bind the company. A company is decisions are made by way of resolution.

49. In the case of *Sunrise Orthopedic and Trauma Hospital Ltd & another v Lectary Kibor Keiyo Lelei* [2011] eKLR it was observed as follows;

“.....But how does it commence proceedings? Because of its artificial identity, it does so through its organs managed by men: its shareholders and or its directors. The recognized



means by which a corporate personality expresses its decisions is by way of resolutions.Those decisions are made in validly convened meetings of the directors who in the case of the 1st plaintiff are also the only shareholders.”

50. In the case at hand there were board resolution on the sale of BFVA to Busara Computer Point Limited. The board resolutions were produced by the defence. After the transfer of the property the company had absolute ownership to deal as they so wish with the property. The prosecution has failed to demonstrate fraud on the side of the accused person on the board resolutions. It is of important to note that the court is not dealing with any other dispute between the parties except the fraud and or intentions to defraud as per the particulars of the charges.
51. Lastly, accused persons are charged with obtaining registration of land by false pretence contrary to section 320 of the *Penal Code*. Its alleged that on the 3rd May 2001 at Nyahururu District Land Registry within the Republic of Kenya jointly with other not before the court; with intent to defraud M/ S Busara Forest View Academy Limited of its parcel of land Nyandarua/Oljoro Orok Salient /1343 measuring approximately 13.3 Acres Valued at Ksh.20 million fraudulently obtained the registration of the said land parcel in the name of M/S Busara Computer Point Limited.
52. There is no doubt that the accused persons made resolutions sale business of BFVA to Busara Computer Point Limited to on the 1/03/2001. The sale followed transfer the land parcel Nyandarua/Oljoro Orok Salient /1343 which formed part of the assets from BFVA to Busara Computer Point Limited for a consideration of Ksh.25 M as per sale agreement produced by as exhibit 14. The land was transferred successfully as per the green card produced as exhibit 15 n the 3/5/2001. In the year 2013 the title was charged for a loan of Ksh.60 M by Busara Computer Point Limited. The court having found the resolution to sale the business was proper since they were passed by directors, the registration therefore could not have been fraudulent. The defence produced documents which include minute book extract of resolution by the directors. After the complainant felt frustrated he withdrew from activities of the company and the two remaining directors went on. They did not consult the complainant since they had quorum for board meetings. They had to get an advocate to take the minutes for key resolution on the sale of the company. The complainant resigned as a director in writing in the year 1999.
53. The I/O managed to retrieve documents in support of the prosecution case. The defence did not deny knowledge of the said documents. The defence actually added more document to demonstrate how the company operated from inception up to date. The issue of fraud has not been established against the accused person. The representation of documents was done by way resolution which is within the requirements of a company limited by shares. None of the accused person ever dealt with the company asset in his individual capacity. The title deed was a genuine document as per the registrar of lands. The transaction was done in the course of duty. The directors charged the property successfully meaning is was genuine document. Although the complainant alleged the registrar advised them the resolutions were irregular and ought to be expunged there was nothing written to support his version. The complainant ought to have had the observations by the registrar put into writing since among the irregularities he mentioned was on change of value of shares. He transferred his one share to the 1st accused for a vehicle which he admits he still owns.
54. In conclusion, the court has had an opportunity to go through the evidence both orally and documentary as produced by the parties as well as submission. It is observed that the disputed document produced as prosecution exhibit no.1 was executed in the presence of all the parties in the officer of PW5 on the 21/10/1994. The case at hand was lodged by way of a complaint letter dated 21/11/2016 and accused person were charged in court in 2018. According to complainant all went on



well until 2001 when the BFVA was sold to Busara Computer Point and in 2013 the accused secured a loan of Ksh.60M. It took the complainant several years to lodge his complaint. After 1st accused signed the transfer in his presence in 1994, he did not find the same to be a misconduct until 2016 (about 22 Years). It is not clear what prompted him to raise the complaint after several years but probably after years he felt frustrated. The Articles of Association produced as exhibit Article 31 is about any difference arising between the company on one hand and the any member on the other side it limits any dispute to arbitration which seems not to be the case.

55. In the upshot I find the prosecution has failed to prove their case to the threshold of beyond reasonable doubt. The defence evidence challenged the prosecution evidence creating doubt as the charges facing accused persons. Had the investigating officer received all the documents produced in court by the parties and considered them, the matter in the first place would not have been before this court. Parties would have been properly advised to do arbitration way and any party not satisfied to move the High Court appropriately. I hereby acquit each accused of the charges of forgery, uttering a false document, conspiracy to defraud and obtaining land registration as charged under section 215 of the [Criminal Procedure Code](#). Each accused is set at liberty unless otherwise lawfully held. Right of Appeal explained.

DATED AND DELIVERED IN OPEN COURT THIS 12TH DAY OF JULY, 2023.

ESTHER K. KIMILU

SENIOR PRINCIPAL MAGISTRATE

