



REPUBLIC OF KENYA



KENYA LAW
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**Munga v Republic (Criminal Appeal E107 of 2023)
[2025] KEHC 17007 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17007 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E107 OF 2023
M THANDE, J
NOVEMBER 14, 2025**

BETWEEN

ROBINSON TSUMA MUNGA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant herein was charged in Malindi Criminal Case No. E496 of 2021 and convicted of the following offences:

Count I Forgery contrary to Section 350 of the Penal Code, the particulars of which are that on 5.1.16, at an unknown place within the Republic of Kenya, jointly with others not before court, with intent to defraud forged a court decree, purporting it to be genuine and signed by the Deputy Registrar Mombasa High Court.

Count II Forgery contrary to Section 350 of the Penal Code, the particulars of which are that on 5.1.16, at an unknown place within the Republic of Kenya, jointly with others not before court, with intent to defraud forged a court decree, purporting it to be genuine and signed by the Deputy Registrar Mombasa High Court.

Count III Forgery contrary to Section 350 of the Penal Code, the particulars of which are that on 21.12.15, at an unknown place within the Republic of Kenya, jointly with others not before court, with intent to defraud forged court proceedings and ruling purporting to be genuine and signed by Judge S. Mukunya.

Count IV Uttering a false document contrary to section 353 of the Penal Code, the particulars of which are that on 21.12.16, at Kilifi Lands Office, Kilifi Township within Kilifi County, knowingly and fraudulently uttered a forged court decree, purporting it to be genuine and originating from Mombasa High Court.



Count Obtaining registration by false pretence contrary to Section 320 of the Penal Code, the particulars of which are that on 12.9.19, at Kilifi Lands Office, Kilifi Township within Kilifi County, willfully procured for himself a Title Deed Number KilifiTakayeMsoloni729 by falsely pretending that the same was obtained from him fraudulently by ALFELT MUMBO ABIO.

2. For Counts I-IV, the Appellant was sentenced to pay a fine of Kshs. 300,000= and in default to serve 7 years imprisonment in each of the counts. For Count V, the Appellant was sentenced to pay a fine of Kshs. 50,000- and in default to serve 1 year imprisonment. All these sentences were to run consecutively.
3. Being aggrieved, the Appellant preferred this Appeal against both conviction and sentence. The grounds are that the trial Magistrate erred in fact and in law by:
 - a) failing to make a finding that there was no Appellant's specimen handwriting and/or signature of the Appellant that was compared against the handwriting and/or signature on the alleged forged documents.
 - b) failing to acknowledge the evidence on record as to whether the Appellant herein made the alleged forged documents and subsequently presented them before the alleged offices/officers.
 - c) failing to make a finding that the prosecution witness statements were contradictory and uncorroborated and non-linked the appellant to the alleged offenses.
 - d) failing to make a finding that the offences of forgery and uttering of false documents were not proved as against the Appellant beyond reasonable doubt.

Further grounds are that the conviction was against the weight of the evidence adduced and that the sentences were harsh and excessive in the circumstances.

4. The Appellant prayed that the Appeal be allowed, the conviction be quashed and sentence set aside.
5. The Appeal was canvassed by way of written submissions.
6. As a first appellate Court, I have subjected the evidence adduced before the trial magistrate to a fresh analysis and evaluation while giving due allowance for the fact that unlike the trial Court, I neither saw nor heard the witnesses. See *Okeno v. Republic* [1972] EA 32.
7. The brief facts of the case as can be gleaned from the record are that the Appellant sold the property known as KilifiTakayeMusoloni729 (Plot 729) to Alfelt Mumbo Abio, PW4. They were both represented by PW2, an advocate, in the transaction. PW5 completed payments in 2011 and title was issued in her name in 2014. She then subdivided the land into 7 portions, sold 4 and retained 3 plots. PW8, PW9 and PW10 confirmed that they had purchased subplots from PW4. In 2015, her caretaker PW1 informed her that there were people measuring the land. She went and found 2 young men clearing the land and when she confronted them, they arrogantly told her she did not have a property there. PW4 called the Appellant and his son who assured her that there was no problem. However, PW6 a surveyor told her that the title for Plot 729 and the resultant plots had been revoked pursuant to a court order issued in Mombasa. PW4 stated that neither she nor the people she had sold the plots to, had been made aware of the court proceedings.
8. In her evidence, PW3 who served as Deputy Registrar in Mombasa at the material time, stated that she did not issue the order and decree dated 21.12.15 that were used to nullify the title to Plot 729.



9. PW6 stated that in September 2019, a decree and order were brought to the survey office in Malindi where he worked. The documents were brought by one Benson who said he was acting for the Appellant. The decree required the reversal of the mutation in respect of Plot 729 and revert it to the original owner. After verifying from Mombasa court that the decree and order were genuine, he wrote to the amendment centre in their Mombasa office for reversal. The reversal was done and the documents taken to Registrar Kilifi County. PW7, the Lands Registrar stated that together with the District Surveyor, they acted on the court order and cancelled subdivisions of Plot 729 including those that had been transferred to third parties, and issued title TakayeMusoloni729 in the name of the Appellant.
10. PW11, a forensic documents examiner told the trial court that he examined the decree, order and judgment and compared them with the known signatures of the persons purported to have signed the same. After subjecting the said documents to examination, he concluded that the decree and order were not signed by PW2 and the judgment was not signed by Judge S. Mukunya who had allegedly signed the same.
11. Section 350 of the Penal Code under which the Appellant was charged provides:
 1. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life, and the court may in addition order that any such document as aforesaid shall be forfeited.
 2. In this section, "document of title to land" includes any deed, map, roll, register or instrument in writing being or containing evidence of the title, or of any part of the title, to any land or to any interest in or arising out of any land, or any authenticated copy thereof.
12. Section 345 of the Penal Code defines forgery as the making of a false document with intent to defraud or to deceive.
13. The punishment for the offence of forgery of judicial or official document is stipulated in Section 351 as follows:

Any person who forges any judicial or official document is liable to imprisonment for seven years.
14. The elements of the offence of forgery were set out by Lesiit, J. (as she then was) in the case of Peter Wanjohi Gitonga v Republic [2020] KEHC 3584 (KLR). She stated:
 21. The Learned trial magistrate cited an Indian case which sets out the ingredients for the offence of forgery. This is the case of Sukanti Chaudhry vs. State of Orisa CRL Rev. No. 1407 of 2008. From this case the ingredients for the offence are, there must be a document or writing; it must be forged by the accused; and, the accused must have used it with the intention that the forged document will be acted upon to the prejudice of the victim.
15. The prosecution was required to prove first, that there was a document or writing; second, that the same was forged by the Appellant; lastly, that the Appellant used the forged document with the intention that the same will be acted upon to the prejudice of PW4, the victim.
16. The evidence of record shows that the proceedings and ruling are not by Hon. Justice S. Mukunya and the signature in the decree and court order is not that of the Deputy Registrar as they purported to be. Further the documents were purportedly issued in Case No. 1 of 2010 by the Environment



and Land Court which was not in existence in 2010. That Court was established under Section 4 of the *Environment and Land Court Act*, which was assented to on 27.8.11 and commenced on 30.8.11. The Court was not in existence in 2010 when the alleged Case No. 1 of 2010 was instituted. The said documents were thus forgeries.

17. While it is not disputed that the documents in question were forged, and that the same were used to the detriment of PW4 who was the victim, the Prosecution was obligated to go a step further and demonstrate that it was the Appellant who forged the same. No evidence was adduced to demonstrate that the Appellant forged the documents in question. From the available evidence, the inescapable conclusion that can be drawn by this Court is that the elements of the offence of forgery were not all established. I thus find that the trial Magistrate misdirected herself for convicting the Appellant of the offence of forgery when it was not proved that he took paper and ink and created the false documents from scratch. (See *Caroline Wanjiku Ngugi v Republic* [2015] eKLR).

18. I now turn to Count IV in which the Appellant was charged with the offence of uttering a false document contrary to Section 353 of the Penal Code which provides:

Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

19. The ingredients for this offence were set out in *Joseph Mukuha Kimani v Republic* [1984] eKLR where the court of Appeal stated:

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.

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 *Samuels v Republic* [1968] E A 1.

20. In Count V, the Appellant was charged with the offence obtaining registration by false pretence contrary to Section 320 of the Penal Code which provides:

Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.

21. The evidence on record shows that the forged documents were used to revert the land sold to PW4, to the Appellant. It is noted that in the purported judgment, order and decree, the Appellant was indicated as the plaintiff while PW4 and the persons she sold the subdivisions of the property to, were named as defendants. The titles in the name of PW4 and the said third parties were cancelled and registration of Plot 729 in the name of the Appellant was restored. Applying the parameters in the cited case, it is evident that the documents were used as genuine. Through deceit, the documents were used to induce a course of action, namely to procure registration of the title in the name of the Appellant. The



cancellation of the titles of PW4 and registration of the Appellant as the owner of Plot 729 resulted in depriving PW4 of land she had genuinely purchased from the Appellant and caused her economic loss.

22. In light of the foregoing, this Court must draw the inference that the Appellant, with intent to defraud PW4, the rightful owner of Plot 729 and the subdivisions thereof, misrepresented the forged judgment, order and decree as genuine, on the strength of which he procured the reversion of the title to his name. It matters not that it was not the Appellant himself who presented the documents for registration at the Kilifi Lands Registry. In any event, PW6 stated that the documents were taken to the survey office by one Benson who said he was acting for the Appellant. The fact that in the purported judgment, order and decree, the Appellant was indicated as the plaintiff while PW4 and the persons who purchased the subdivisions were named as defendants further reinforces the fact that Benson was indeed acting on behalf of the Appellant. Weighing the evidence on record in the case as a whole as guided by *Okethi Olale v. R* [1964] EA 555, this Court finds that the prosecution proved its case against the Appellant beyond reasonable doubt. Accordingly, the Court finds that the conviction of the Appellant on Counts IV and V was safe, and there is no basis for interfering with the same.
23. On sentence, the record shows that in mitigation, defence counsel requested the trial court to take into account the period of 6 months that the Appellant spent in remand before he was granted bond. The record however shows that the Appellant was arrested on 23.6.21 and released on 25.8.21 when his bond was approved. Contrary to the claim by the Appellant, the period spent in custody is not 6 months. In the ruling on sentence, there is no mention by the trial Magistrate that the period spent in custody was taken into account as required under the proviso to Section 333(2) of the Criminal Procedure Code which provides:
- Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
24. In the end, the Appeal partially succeeds. The conviction of the Appellant in respect of Counts I, II and III is quashed and the sentence set aside. The conviction in respect of Counts IV and V is upheld. The sentences in both counts are also upheld save that the same shall run concurrently and shall be reduced by the number of days from 23.6.21 when the Appellant was arrested to 25.8.21 when he was released on bond.

DATED SIGNED AND DELIVERED IN MALINDI THIS 14TH DAY OF NOVEMBER 2025

M. THANDE
JUDGE

