



**Gathanji v Republic (Criminal Appeal E035 of 2025)
[2026] KEHC 513 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E035 OF 2025
RM MWONGO, J
JANUARY 28, 2026**

BETWEEN

MILTON CHOMBA GATHANJI APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal arising from the decision of Hon. S.K. Ngii in the Siakago Magistrate's
Court Criminal Case No. E858 of 2024 delivered on 04th June 2025)*

JUDGMENT

Background

1. The appellant was charged with 7 counts as follows:
 1. The 1st count was conspiracy to commit a felony contrary to section 393 of the Penal Code. Particulars of the 1st count are that on 30th November 2023 at Embu Town in Embu West subcounty within Embu County, the appellant, jointly with another not before court, conspired to commit a felony namely obtaining money by false pretenses.
 2. The 2nd count was conspiracy to commit a felony contrary to section 393 of the Penal Code. Particulars of the 2nd count are that on 30th May 2024 at Embu Town in Embu West subcounty within Embu County, the appellant, jointly with another not before court, conspired to commit a felony namely making a false statement in connection with disposal of land parcel number Mbeere/Kirima/2775 by stating that he was Milton Chomba Gathanji, the registered proprietor of land parcel number Mbeere/Kirima/2775.
 3. The 3rd count was making a false statement contrary to section 103(1)(a) as read with 103(d) of the *Land Registration Act*. Particulars are that on 24th October 2024 at Kiritiri Lands Office in Mbeere South subcounty within Embu County, the appellant knowingly made a false



statement in connection with land parcel number Mbeere/Kirima/2275 to wit that he was Milton Chomba Gathanji, the registered proprietor of the said piece of land.

4. The 4th count was making a false document contrary to section 357(a) as read with section 347(d)(i) of the Penal Code. Particulars are that on 30th May 2024 at Kiritiri Lands office in Mbeere South subcounty, Embu County, the appellant, jointly with another not before court, with the intent to defraud, without lawful excuse or authority, made a land transfer form in the names of Milton Chomba Gathanji, the registered proprietor of land parcel number Mbeere/Kirima/2775.
 5. The 5th count was making a false document contrary to section 357(a) as read with section 347(d)(i) of the Penal Code. Particulars are that on an unknown date, time and place, jointly with others not before court, with the intent to defraud, without lawful excuse or authority, procured the making of a title deed for land parcel number Mbeere/Kirima/2775, the property of Milton Chomba Gathanji, purporting it to be what in fact it is not.
 6. The 6th Count was procuring execution of a document by false pretenses contrary to section 355 of the Penal Code. Particulars are that on 24th October 2024 at Kiritiri lands office in Mbeere South subcounty within Embu County, by means of fraudulent representation, the appellant procured land registrar to Mbeere South to sign the land transfer form for land parcel number Mbeere/Kirima/2775.
 7. The 7th Count was obtaining money by false pretenses contrary to section 313 of the Penal Code. Particulars are that on 30th November 2023 and 21st September 2024 at Embu Town in Embu West subcounty within Embu county, the appellant, jointly with another not before court, with the intent to defraud, obtained from Zedan Company Limited the sum of Kshs.750,000/= by falsely pretending that he was in a position to sell 0.63Ha of land parcel number Mbeere/Kirima/2775, a fact he knew to be false.
2. He pleaded not guilty to all the charges and the matter went to full hearing. Eventually, he was convicted of the 2nd-7th counts. He was sentenced as follows and ordered that the sentences run consecutively:
1. Count 2- imprisonment for 1 year
 2. Count 3- imprisonment for 2 years
 3. Count 4- imprisonment for 2 years
 4. Count 5- imprisonment for 2 years
 5. Count 6- imprisonment for 1 year
 6. Count 7- imprisonment for 2 years

The Appeal

3. Dissatisfied with the Judgment, the appellant filed a petition of appeal dated 08th November 2024. It seeks that the convictions and sentences be set aside and he be set at liberty. The grounds of appeal are that:
 1. The Learned trial Magistrate erred in law and fact by imposing harsh sentences and ordering that they should run consecutively;



2. The trial Magistrate erred in law and fact by convicting the appellant for the offence of conspiracy and making a document without authority whereas the critical ingredients of the same were not proved beyond reasonable doubt;
3. That trial Magistrate erred in law and fact by ignoring the appellant's defense which was enough to displace the prosecution's case; and
4. The trial Magistrate erred in law and fact by relying on contradictory evidence.

Summary of the Evidence in the Trial Court

4. PW1 was Angelica Wangithi Chomba, the widow of Milton Chomba Gathanji who was the registered proprietor of the land in question. He died in 2016 and she produced his death certificate. While she was away from the land, in May 2024, she was called by a neighbour who informed her that she had noticed some people coming to and from the land. She conducted a search and found that the land was still in the name of her late husband. In November 2024, the neighbour informed her that there were some people cultivating the said land. When she asked them why they were doing so on land that belonged to her late husband, they said that the owner of the land had sent them to cultivate it.
5. She conducted another search which revealed that the land had been transferred to an entity called Zedan Company Limited. When she obtained the green card for the property, she noted that the land had been transferred by someone going by the name of her late husband. She reported the matter to the police. She did not have her late husband's national ID card but she noticed from the transaction documents that the national ID card purportedly belonging to her husband was forged. It was also her testimony that the passport photographs used for the transaction were not images of her late husband.
6. PW2 was Esther Ngendo Mugo who stated that the shareholders of Zedan Company Limited are also members of a Upendo Self-Help Group, a welfare group to which she belongs. That through the welfare, the members had saved Kshs.400,000/= which they resolved to use to buy land. The bank where their savings were held advised them to incorporate a company through which they would purchase land. Consequently, they incorporated Zedan Company Limited and she produced its certificate of incorporation and KRA PIN as evidence. In 2023, one of the members informed them that she knew someone who was selling land in Meka and she introduced them to one Njagi who introduced them to the vendor, the appellant herein but who identified himself as Milton Chomba.
7. The vendor offered them the land for Kshs.750,000/= after negotiations and the group agreed to buy the land. The appellant met the group the following day with a national ID showing his names as Milton Chomba and they went to Beth Ndorongo & Co. Advocates where a sale agreement was drawn. They paid a deposit of Kshs.375,000/= into an Equity Bank Account and Kshs.25,000/= was paid in cash to the appellant. It was agreed that the balance would be paid to the vendor within 5 months. She stated that the Land Control Board consent was procured and the transfer forms were prepared by a surveyor called Gitonga.
8. The transaction was completed and some members of the group were even using the land before the case was later reported. She testified that when the matter was reported to the police, the members of the groups who were also the owners of the company were summoned to the police station where they were informed that the land was obtained fraudulently. The appellant was arrested and investigations commenced, disclosing that he had disguised himself as the owner of the land whilst he was not. The group submitted the title deed they had obtained to the Land Registrar for cancellation. In cross-examination, she stated that the appellant was introduced to her by one Njagi and they paid him the deposit of the purchase price.



9. PW3 was Samuel Gichoria Maina who stated that he is one of the directors of Zedan Company Limited which was formed from Upendo Self-Help Group. The members of the group had been saving money collectively since 2020. One of the members introduced them to a land seller who identified himself as Milton Chomba Gathanji who was selling Mbeere/Kirima/1775. The company paid a deposit of Kshs.400,000/= through their bank account which they had opened to enable the transaction.
10. The transaction was completed and the vendor provided all his identification documents as required. He stated that later, they were summoned by police who had received a report that the land was obtained through fraud. They lured the vendor to the police station and it was discovered that he was not the actual proprietor of the land he sold to the company. In cross-examination, he stated that he exchanged contacts with the appellant whom he knew as Milton. The appellant visited him at work a few times.
11. PW4 was Anthony Gitonga Ngithi, a land surveyor who stated that he was approached by officials of Zedan Company Limited who were seeking assistance to transfer land they had bought into the company's name. He advised them to conduct an official search of the property and they procured his services to do so. He found that the land was registered to one Milton Chomba Gathanji and once this was confirmed, he prepared the requisite transfer documents for the buyers.
12. He guided them through the whole transaction as required by law and they obtained a title document in the name of the company. All along, the appellant produced identification documents which showed that he was the registered owner of the land. He was later called by the DCI to help them identify the parties involved in the transaction and he did so. In cross-examination, he stated that the appellant introduced himself to him as Milton Chomba Gathanji. He did not visit the land since it was unnecessary for him to do so.
13. PW5 was CPL Boniface Mwonga of DCI Mbeere South who stated that the Land Registrar Kiritiri called to inform him that someone had been defrauded of their land. The Registrar gave her copies of the old title deed and transfer forms and informed him that the registered owner was deceased at the time of the transfer. He interrogated PW1, the widow of the proprietor and she showed him a death certificate showing that the deceased died in 2016. He discovered that the genuine title deed was issued on 23rd January 2006. He interrogated the buyers who narrated how they had acquired the new title through transfer from the appellant posing as the registered proprietor.
14. According to them, the seller was alive and he even produced his identification documents to them before they paid for the land. Investigations led to a finding that the appellant, posing as the seller, had impersonated the deceased registered proprietor and sold the land. He received part of the purchase price and there were bank records to show for it. PW5 compared images of the face of the appellant and the deceased proprietor of the land and found that they were 2 different people. He stated that the photograph on the ID produced at the time of the transaction is that of the appellant but the details on the ID belonged to the deceased's ID. He produced copies of the transaction documents and title deeds as evidence.
15. DW1 was the appellant who stated that his friend Charles Mwaniki asked him to accompany him to Kiritiri where he was meeting some people. He went and they met 6 people including police officers who arrested them and took them to Mugoya Police Station. He denied involvement and stated that he did not know why Charles got him involved in the first place. In cross-examination, he further denied impersonating anyone or offering to sell any land. He denied forging any documents and stated that the photographs on the transfer forms were not his since people resemble one another all the time. He denied owning the bank account where the purchase price was paid into.



Parties' Submissions

16. The parties to the appeal were directed to file their written submissions and they both complied.
17. The appellant submitted that following conviction for the 6 offences and the sentences imposed by the trial court, an order should have been made that the sentences run concurrently since they arose from the same transaction. That in his case, a sentence of 2 years imprisonment should be sufficient as punishment for all the 6 offences. He argued that he is a first offender and the court ought to have considered that before imposing such a hefty sentence. He urged the court to allow the appeal.
18. The respondent relied on the provisions of the law violated by the accused in the various counts for which the appellant was convicted. It argued that from the evidence, it was firmly established beyond reasonable doubt that the appellant committed the offences. It stated that the defense of the appellant was considered but it did not displace the prosecution's case. It urged the court to dismiss the appeal.

Issues for Determination

19. The issues for determination are the following:
 1. Whether the offences the appellant was convicted of were proved beyond reasonable doubt; and
 2. Whether the sentences imposed should be set aside.

Analysis and Determination

20. This court is well aware of its obligations as a first appellate court and it must endeavour to review the evidence at trial and reach its own conclusion. I agree with the Court in the case of *Okeno v Republic* (1972) E.A 32 when it held:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court must itself weigh conflicting evidence and draw its own conclusions. It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion. It must make its own finding and draw its own conclusions only then can it decide whether the magistrate's finding should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

21. In the present case, the 2nd count was conspiracy to commit a felony contrary to section 393 of the Penal Code which provides:

“Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Kenya would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to that lesser punishment.”

22. From the evidence availed by the prosecution, it is clear that the appellant was involved in misleading PW2, PW3 and PW4 the buyers of the land that he was the registered proprietor. This was clearly asserted by the witnesses, who testified that the appellant was with one Charles Mwaniki in



perpetrating the plan to impersonate and sell another person's land. The appellant's photograph was involved in the land sale transaction and it was ultimately discovered that he was not the registered owner as stated by PW1 and PW5.

23. PW3 stated that the appellant, who introduced himself as Milton Chomba Gathanji used to visit him at his place of work as they had exchanged contacts. In his defense, the appellant stated that he was pulled into the conspiracy by Charles Mwaniki who later died in prison. It was his statement that he did not know why Charles involved him in the fraudulent actions. All these sentiments prove the offence in the 2nd count beyond reasonable doubt.

24. The 3rd count was making a false statement contrary to section 103(1)(a) as read with 103(d) of the Land Registration Act which provides as follows:

“A person who knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act; or fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Registrar, or any authorized officer exercising powers under this Act, or assist or joins in so doing, any material document, factor matter, commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.”

25. For this offence to stand, it is paramount that the accused person made the false statement knowingly and that the statement was intended to conceal the truth from the Registrar. Upon the evidence adduced, from the point of making the sale offer to drawing the sale agreement to issuance of a title deed following transfer, the appellant introduced and falsely represented himself as the vendor. He appeared in person and produced falsified documents to aide the transaction. Through investigations, it was discovered that he was, in fact, not the registered proprietor, the registered proprietor having been long dead by the time of the transaction. This was a fact that was concealed from the Registrar. This offence was therefore proved beyond reasonable doubt.

26. The 4th and 5th counts were making a false document contrary to section 357(a) as read with section 347(d)(i) of the Penal Code which states:

“Any person who, with intent to defraud or to deceive- without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing.....is guilty of a felony and is liable to imprisonment for seven years.;

Any person makes a false document who signs a document—

(i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing”

27. The 4th count is with regard to making of transfer form while the 5th count regards making of the title deed in the name of the company. PW4 was approached by PW3 and PW2 as officials of Zedan Company Limited who had already initiated the transaction and even paid a deposit. They instructed him to conduct a search and then prepare for them the relevant documents for the transactions. PW4 testified that he did so and at every stage, the appellant signed the documents as the proprietor of the land.



28. Eventually, a title deed was issued in the name of the company. He stated that the appellant provided identification documents showing that the land belonged to him as Milton Chomba Gathanji. This evidence is proof that he made the transfer documents that led to making of the title document. However, there is nothing to prove beyond reasonable doubt, the appellant actually made the title deed that was issued to the purchasing company. He certainly influenced it's making by his representations, but he did not make the title. To that end, the offence in the 4th count was proved beyond reasonable doubt, but the offence in the 5th Count has no proof, and was not capable of securing a conviction.
29. The 6th Count was procuring execution of a document by false pretenses contrary to section 355 of the Penal Code which provides:
- “ Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document or electronic record, procures another to sign or execute the document or electronic record, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or electronic record.”
30. This provision indicates that where a person makes or procures another to sign/forged a document through false or fraudulent representations and without disclosing its wrongful purpose, and the said purpose becomes fraudulent, that person who misleads or coerces the other is also guilty of the offence of forgery as much as the one who actually signed it. A form of co-liability is created by this offence. In his defense, the appellant stated that he was involved in the offence by Charles Mwaniki, whom he introduced to PW2, PW3 and PW4 as his brother. The police arrested them together after the matter was reported.
31. Eventually, Charles Mwaniki died in remand whilst the case was pending. Regarding this offence, the appellant indeed, did have an accomplice who may or may not have coerced him into making forged documents. Given the evidence adduced, both the appellant herein and the said Charles Mwaniki are responsible for forging and signing documents that were used in completing a fraudulent transfer. However, since Charles Mwaniki cannot be convicted posthumously, the appellant must be found equally and jointly co-liable and guilty of the named offence.
32. The 7th Count was obtaining money by false pretenses contrary to section 313 of the Penal Code
- “ Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write any name or impress or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanour and is liable to imprisonment for three years.”
33. The elements that make the offence herein were discussed in the case of *Gerald Ndoho Munjuga v Republic* [2016] KEHC 6508 (KLR), where the High Court stated:
- “ The offence of obtaining by false pretence means knowingly obtaining another person's property by means of a misrepresentation of fact with intent to defraud. For the offence of obtaining by false pretences to be committed, the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of an accused to make his victim part with a thing capable of being stolen or to make his victim deliver a thing capable of being stolen will expose the accused to imprisonment for the offence.”



34. The evidence adduced by the prosecution proved beyond reasonable doubt that the appellant knowingly pretended to be the deceased Milton Chomba Gathanji, the owner of the land. He forged documents to that effect, received money as purchase price for it, and signed relevant documents to effect the transfer of the land. This purchase price was obtained by false pretenses as already discussed herein. Zedan Company Limited paid money to the appellant without knowing that he was not the actual owner of the land until PW1 reported the matter to the police. The evidence adduced was sufficient to prove the said offence beyond reasonable doubt.
35. Following conviction, the appellant was sentenced as stated in the trial court's judgment. In this appeal, he has argued that the sentences are harsh and excessive. In his submissions, the appellant has argued that the trial court should have ordered that the sentences run concurrently and not consecutively because they arose from the same transaction. A trial court reserves the right to order that the sentences run concurrently or consecutively. The correct position in law is that sentences should run consecutively unless a court orders that they run concurrently. In that regard, Section 14(1) of the Criminal Procedure Code provides as follows:
- “Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.” [Emphasis added]
36. In the case of *Peter Mbugua Kabui v Republic* [2016] eKLR the Court of Appeal expressed itself on the subject as to when a consecutive or concurrent sentence should apply:
- “As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.” [Emphasis added]
37. In *Marsack v Republic* [2025] KEHC 6807 (KLR) the court ordered that several sentences run concurrently, setting aside the trial court's order that the sentences should run consecutively. In that case, the court stated:
- “Similarly, in *Sawedi Mukasa s/o Abdulla Aligwaisa* [1946] 13 EACA 97, the Court of Appeal for Eastern Africa considered the issue of a consecutive as opposed to a concurrent sentence and expressed the view that it was still good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.
- Further guidance can be drawn from the judiciary Sentencing Policy Guidelines which contain specific provisions explaining circumstances when a court should impose consecutive or concurrent sentence. The Guidelines provide as follows:
- “7.13 Where the offences emanate from a single transaction, the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentence should run consecutively.”



38. In the present case, there are multiple victims being the widow of Milton Chomba Gathanji, the Land Registrar and Zedan Company Limited. Further, there were different offences committed. In addition, the offences were committed at different points in time, and in respect of different victims. Count 2 and 4 were committed on 30th May, 2024, Count 3 on 24th October, 2024, Count 6 on 24th October, 2024 and Count 7 on 30th November, 2024 and 21st September, 2024. Therefore, the sentences should run consecutively as correctly directed by the trial Court.

Disposition

39. In light of all the foregoing, the appeal succeeds partially as follows:

1. The conviction and sentence by the trial court on the 5th count is hereby set aside;
2. The convictions on the 2nd, 3rd, 4th, 6th and 7th counts are hereby upheld as found by the trial court;
3. The sentences imposed on the 2nd, 3rd, 4th, 6th and 7th counts be upheld as they are fair and just. For the avoidance of doubt, the sentences imposed herein are as follows:
 - i. Count 2- imprisonment for 1 year
 - ii. Count 3- imprisonment for 2 years
 - iii. Count 4- imprisonment for 2 years
 - iv. Count 6- imprisonment for 1 year
 - v. Count 7- imprisonment for 2 years
4. The trial court's order that the sentences should run consecutively is hereby upheld.

40. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28TH DAY OF JANUARY, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Applicant Present in Court
2. Ms. Mwaniki for the Respondent
3. Francis Munyao - Court Assistant

