



REPUBLIC OF KENYA



**Republic v Ng'ang'a alias Frank (Criminal Appeal E035 of 2025)
[2026] KEHC 2533 (KLR) (24 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E035 OF 2025
WM MUSYOKA, J
FEBRUARY 24, 2026**

BETWEEN

REPUBLIC APPELLANT

AND

JAMES NDIRANGU NG'ANG'A ALIAS FRANK RESPONDENT

(Appeal from judgment and acquittal, by Hon. R. Odenyo, Senior Principal Magistrate, SPM, in Busia MCCRC No. E056 of 2025, delivered on 27th June 2025)

JUDGMENT

1. The respondent had been indicted on multiple counts, and was acquitted of all of them. This appeal arose from those acquittals.
2. Count I related to conspiracy to commit a felony, contrary to section 393 of the Penal Code, Cap 63, Laws of Kenya. It was alleged that he had, on or before 16th August 2024, conspired with others to defraud the estate of the late Benson Ng'ang'a, hereafter the deceased.
3. Count II charged him with forgery, contrary to section 345, as read with section 349, of the Penal Code, on allegations that on or before 16th August 2024, he, and others, had forged a signature of the deceased, being with respect to transfer of interest in land and a letter of consent for Busia Municipality/532, 533 and 535. The alternative charge to Count II charged him with uttering the alleged false documents, the subject of Count II, contrary to section 353 of the Penal Code, on the allegation that he had, on or before 16th August 2024, uttered the false documents, forged as alleged in Count II, to the Registrar of Companies and to the Busia County Registrar of Lands.
4. Count III charged forgery, contrary to section 345, as read with section 349, of the Penal Code, supported by the particulars that on or before 16th August 2024, he, and others, had forged the signature of the deceased, purporting the document to be a transfer of shares or stock. There was an



- alternative charge to that count, charging uttering a false document, contrary to section 353 of the Penal Code, based on the allegation that he and others uttered the said documents, the transfer of shares or stock to the Registrar of Companies. Count IV charged him with forgery, contrary to section 345, as read with section 349, of the Penal Code, alleging that he had, on or before 16th August 2024, with others, forged the signature of the deceased, on a notice of special/ordinary resolution required by the *Companies Act*, Cap 486, Laws of Kenya, to be lodged with the Registrar of Companies. The alternative charge to that Count was the uttering of the said forged document, to the Registrar of Companies, contrary to section 353 of the Penal Code.
5. Count V charged the respondent with forging the signature of the deceased, on minutes of a meeting of Bennandira Limited, hereafter the Company, held on 4th February 2022, at the registered offices of the said company. There was an alternative charge to that Count, charging him with uttering that false document, the minutes, to the Registrar of Companies, contrary to section 353 of the Penal Code. Count VI charged the respondent with forging the signature of the deceased, on a company registration form, contrary to section 345, as read with section 349, of the Penal Code. There was an alternative charge to that Count, charging with uttering a false document, to wit the forged Company registration for, to the Registrar of Companies, contrary to section 353 of the Penal Code.
 6. Count VII was a charge of forging a signature of the deceased, on a memorandum for a company with share capital, contrary to section 345, as read with section 349, of the Penal Code. There was an alternative to it, charging the respondent with uttering a false document, being the forged Memorandum for a company with share capital, contrary to section 353 of the Penal Code. Count VIII also charged the respondent with forging the signature of the deceased, on a transfer of shares or stock document, contrary to section 345, as read with section 349 of the Penal Code. There was an alternative charge, that he uttered that forged document, the transfer of shares or stock, to the Registrar of Companies, contrary to section 353 of the Penal Code.
 7. Count IX was another charge of forging the signature of the deceased, on a transfer of lease, contrary to sections 345 and 349 of the Penal Code. An alternative charge to that charged him with uttering that false or forged document, the transfer of lease, to the Registrar of Companies, contrary to section 353 of the Penal Code. Count X also charged forgery of a signature of the deceased, on a consent to act as a director of the Company, contrary to sections 345 and 349 of the Penal Code. The alternative charge was that he had uttered that false forged document, the consent to act as a director of the Company, to the Registrar of Companies, contrary to section 353 of the Penal Code.
 8. Count XI charged forging the signature of the deceased, on a notice of change of directors' particulars, contrary to sections 345 and 349 of the Penal Code. The alternative charge was of uttering that false forged notice of change of directors' particulars, contrary to section 353 of the Penal Code.
 9. The respondent denied all those charges. A trial was conducted. 10 witnesses testified for the prosecution.
 10. PW1, Margaret Wangui Ng'ang'a, was the widow of the deceased. She testified that she did not know about the company that her late husband had incorporated, but he had told her, in 2023, that he had stumbled on documents, in his office, which he suspected were forged. He suspected that the respondent was responsible, and wanted to report him to the police, but she dissuaded him. The deceased died shortly thereafter.
 11. PW2, Jane Wairimu Ng'ang'a, was a daughter of PW1, and a half-sister of the respondent. She testified that the deceased had handed over to her documents that he claimed had been forged, and said that he had said that he suspected that the forgery was done by the respondent and his Advocate. The documents handed over were a statement of the particulars of Bena Plaza, distribution of shares to



some family members, a profile of special/outstanding particulars, transfer of lease, minutes, notice of change of particulars of directors, memorandum of company, company registration form for the Company, transfer forms for shares, and transfers of land. The deceased informed her that his signature in all those documents were forged. He gave them a bundle of cheques, to demonstrate to them how his genuine signatures looked.

12. PW3, No. 112561, Police Constable Audrey Otieno, was a forensic document examiner. She was given a bundle of documents, which were purported, in the charges, to bear forged signatures of the deceased and of PW1; and another set of documents, which were said to bear the genuine signatures of the 2. The documents that were presented to her, with the purported forged signatures were transfer of shares or stocks; notice of special/ordinary resolutions; land registration general resolutions; minutes of meeting of the Company held on 4th February 2022; company registration form; memorandum of company with shares; transfer of share stock; transfer of lease; consent to act as directors; and notice of change of particulars of directors. The documents which bore the alleged genuine signatures were assorted cheques; an affidavit of marriage; and specimen signature and handwritings.
13. Her remit was to compare the 2 sets of documents, and give an opinion on whether the purported forged signature were true signatures of the 2, that is the deceased and of PW1. She did the comparisons, and, in the end, came up with an opinion, that none of the purported forged signatures were made by the deceased, nor by PW1.
14. She further testified to being given another bundle of documents, which were purported, in the charges, to bear forged signatures of the deceased and of PW1; and another set of documents, which were said to bear the genuine signatures of the 2, and of the respondent. The documents that were presented to her, with the purported forged signatures were transfer forms for Busia Municipality/532, 533 and 535; consents to transfer the said parcels of land; letters of consents for transfer of the said lands; transfer forms for Busia Municipality/533; letter of consent of Busia Municipality/533; transfer of shares for Pauline Wanjeri Ng'ang'a; transfer of shares for Miriam Wacuka; CR10 and 12 forms in respect of the Company and a copy of annual returns for the company. The documents, allegedly bearing the known or genuine signatures of the deceased, PW1 and the respondent were not disclosed, for she merely described them as exhibits.
15. The request made to her was to compare the 2 sets of signatures, and render an opinion on the genuineness of the signatures that were alleged to be forged. She did the comparison, and rendered an opinion, that the signatures purported to have been by the deceased were not made by him, those that were purported to have been made by the respondent had in fact been made by him.
16. PW4, Bwire Geoffrey Oundo, was a Ugandan, who worked as a cleaner and caretaker of the premises standing on Busia Municipality/532, 533 and 535, known as Bena Plaza. He described himself as an employee of the deceased, whose services were terminated by the respondent, after the deceased died. His testimony was that he was in the office, at one time, with the deceased, sometime in December 2023, when the latter stumbled upon some documents, and exclaimed, "Huyu kijana amenimaliza," which translates to, "this young man has finished me." He said that he did not know of the contents of the documents which prompted the deceased to make that exclamation, and that he and the deceased were the only ones in the office at that time.
17. PW5, Joseph Barasa Mulama, was the acting Assistant Chief of Township Sub-Location, in 2024. He was approached by the respondent, 2 or so days after the deceased died, seeking an official letter from him, to enable him withdraw money from a bank account, supposedly in the name of the deceased, to enable him finance the burial of the deceased. The respondent claimed to be the only surviving son of the deceased. PW5 declined, and required him to furnish him with a burial permit or certificate



- of death, and minutes of a family meeting. He did not come back. Later PW1 also approached him, seeking a similar letter, and he asked to be furnished with the same documents that he had asked the respondent to bring, she too did not come back.
18. PW6, Collins Liyayi Ayela, was a land registration officer. He testified on Busia Municipality/532, 533 and 535. He had the green cards for the 3 parcels of land, which he produced, together with other registration documents. He stated that the register for Busia Municipality/532 opened on 19th September 2008, and it indicated the deceased as the lessor, from the County Council of Busia. The said property was transferred to the Company, on 20th April 2022. The register for Busia Municipality/533 opened on 19th September 2008, and the property was registered, as at that date, in favour of the deceased, being a lease from the County Council of Busia. The said property was transferred to the Company, on 20th April 2022, and a lease certificate was duly issued to that company, on that date. The register for Busia Municipality/535, opened on 29th August 1995, and was registered on 7th December 2007, as a lease to the deceased. The lease was transferred to the Company, on 20th April 2022, a certificate of lease was duly issued on the same date. He also produced the transfer documents, moving the leases for Busia Municipality/532, 533 and 535, from the deceased to the Company.
 19. He stated that the transfer documents were duly signed by the deceased, and 2 others. The deceased, as transferor, was identified by an attesting Advocate, through an identity card. He also produced relevant consents, that supported those transactions and dealings. He averred that after the transfers were registered, charges were registered, against the titles, in favour of lending institutions, to secure loans advanced to the Company. He confirmed that the documents, that he had referred to and produced, were registered at the offices of the lands' registry at Busia, after the said office was satisfied that they had been regularly executed.
 20. He highlighted that there was a certificate of execution, signed by an Advocate, Mr. PK Kamau. He stated that the directors of the Company, were identified as the deceased and the respondent, who had properly identified themselves, to the Advocate, using their national registration cards. He also stated that the transfers were supported by consents from the National Land Commission. He asserted that the transfers to the Company did take place. He also asserted that for the transactions to have been effected, all the procedures should have been complied with. He could not, though, vouch for the authenticity of the said documents.
 21. PW7, Joshua Mugendi Njagi, was a senior clerical officer with the Business Registration Service, formerly the Registry of Companies. He testified on the registration of the Company. He produced documents relating to that registration. He stated that there was an application for registration, and a certificate of incorporation had been issued. He stated that the registration was done by the respondent, on 22nd April 2020. The directors were said to be the deceased and the respondent, who held equal shares in the company. He described the respondent as the author of the registration documents.
 22. Changes were effected in the Company, vide minutes of the Company, dated 4th February 2022, signed by the deceased and the respondent, wherein shares were transferred, by the deceased, to PW1, Pauline Wanjeri Ng'ang'a, Lillian Wanjohi Ng'ang'a and Miriam Wacuka Ng'ang'a, totalling 10,000. The said minutes were supported by share transfer forms and a special resolution of the Company. The resolutions were lodged by the deceased. The proposed changes were initially declined by the registry, for lack of consent from the deceased, but were accepted after that consent was received. An appointment of a Company Secretary was also filed, through minutes of a meeting, attended by the deceased and the respondent, with the minutes being signed by the respondent, as the Chair.



23. Upon the demise of the deceased, minutes were lodged, dated 5th March 2024, notifying the registry of the said death, and appointing Stephen Ouma Amukoa a director of the Company. PW1 was appointed a director, vide form CR6, of 15th April 2024, which was lodged, by the Company Secretary, together with minutes of 12th April 2024, signed by the respondent and the other director, Stephen Ouma Amukoa. He stated that other changes were proposed by minutes dated 23rd and 29th April 2025, which had not been effected, relating to resignations of directors, all lodged by the respondent. The registration was not effected as the registry had become aware of disputes relating to the Company.
24. He stated that at registration, all the procedures were followed, and all the documents were executed. Initially, all the correspondence was through a joint email address of both directors, the deceased and the respondent, but later the deceased acquired his own address. He stated that the 10,000 shares transfer to the 4 individuals were from the shareholding of the deceased. He stated that there was nothing wrong with that. He stated further that the Company returns, for the period prior to 2024 were lodged at the registry by the deceased. He stated that he could not confirm whether the signatures on the documents, claimed to belong to the deceased, were actually his.
25. PW8, Joseph Obongo Mbeja, provided company secretarial services to the Company. He stated that he was appointed as such through minutes dated 1st December 2023, although he had provided some consultancy services in September 2023. He said the resolutions appointing him were passed by the deceased and the respondent, according to the documents. He said that his services were provided for the year January 2024 to December 2024.
26. He stated that his duties were mainly to file notifications with the Registrar of Companies, and preparation of resolutions. He said that his instructions came from both the deceased and the respondent. The respondent would instruct, and he, PW8, would call the deceased, on phone, for confirmation. He stated that a resolution of 14th March 2024 moved the shares held by the deceased, to his estate, upon his demise. He said that Miriam Ng'ang'a and PW2 objected to being appointed directors, but PW1 consented. He stated that he resigned his role as Company Secretary, when his services were not paid for, and after litigation erupted over the Company. He said that he never attended any meeting of the Company, and that he never met the deceased in person.
27. PW9, Paul Kuria Kamau, was an Advocate who had worked for the Company, on instructions from the deceased. He stated that he had not met the respondent. He stated that the deceased used to visit him at his chambers at Kakamega, and had instructed him to transfer shares of the Company. He also testified that the deceased had instructed him to handle conveyancing briefs for him, with relation to creation of charges and mortgages.
28. PW10, No. 235270 Chief Inspector of Police Nicholas Waringa, was the investigating officer. He had received a complaint, from PW1, to effect that the respondent had used the Company, to have the property of the deceased transferred to that company, without the knowledge of the deceased, and the other members of the family. He detailed the investigations that he conducted.
29. The appellant was put on his defence, vide a ruling delivered on 17th June 2025. He made a sworn statement, and called witnesses.
30. DW1, Dickens Wekesa Wanjala, was a branch manager for Diamond Trust Bank, DTB, Busia branch. He described the Company, as a customer of the bank, whose account was opened on 20th March 2021. The bank was provided with a certificate of incorporation, which indicated that the company was incorporated in 2020, and its directors, were the deceased and the respondent. He stated that one of the conditions for the opening of an account by a company, both directors are required to be present, and that both the deceased and the respondent were present when the corporate account for the Company



- was opened. He asserted that the forms, for the opening of the account, were executed by the 2, in his presence, on 21st March 2021. He stated that it was the deceased who was transacting the account. He stated that that account became unoperational, in December 2024, following a court order.
31. The respondent testified as DW2. He explained that the Company was incorporated by the deceased, after litigation that pitted him against Samuel Wainaina, to forestall any adverse action being taken with relation to Busia Municipality/532, 533 and 535, over debts arising from that litigation. The Company was incorporated in 2020, after which Busia Municipality/532, 533 and 535 were transferred to the company. That transfer was facilitated by a bank, to which the deceased was indebted, with the transactions being done by the Advocates for the bank. He denied that the deceased would have stumbled on legal documents relating to the registration of the Company, and the transfers to the Company, at the offices of the Company, given that those documents were in the custody of the Advocates for the Company.
 32. Upon the demise of the deceased, the family met, on 4th March 2024, and discussed the issue of the Company. It was agreed that PW1 and PW2 be appointed directors, together with others. Disagreements over the Company exploded from then, with litigation being filed in various courts over the matter. He asserted that the Company was formed in April 2020, during the lifetime of the deceased, and Busia Municipality/532, 533 and 535 were transferred to the Company, during the lifetime of the deceased, and that the rents from tenants were being paid to an account operated by the Company.
 33. During cross-examination, he conceded that he had gone to see PW5, for a letter to facilitate withdrawal of money from the Company account. He said he withdrew the money to meet funeral expenses from an account of the Company at DTB bank, which he could withdraw, as a single signatory had authority to make withdrawals. He said that the withdrawals that he made from that account were used to meet statutory obligations to the Kenya Revenue Authority, and relating to land rates, for paying employees and other charges. He conceded that some of the tenants had signed leases between them and the deceased, as a person, rather than on behalf of the Company. He further stated that at the family meeting that it was agreed that the cash paying tenants pay rents directly to PW1.
 34. DW3, Godfrey Wasiche, an accountant, assisted the deceased with the incorporation of the Company, being the initials of the name of the deceased. He stated that the incorporation was done in 2020, with the deceased and the respondent as the initial directors. He introduced the deceased to a person at Huduma Centre to help him out, while the rest was done by an Advocate. He said that the deceased paid for the incorporation, and that he saw him personally sign the incorporation papers.
 35. DW4, Tony Seth Omeri, was one of the Advocates for the deceased. He testified that he conducted litigation for him, both at Busia and at Eldoret. He stated that the Company was incorporated by the deceased in 2020, before he hired him as one of his lawyers. He testified that the deceased did the incorporation to safeguard his property from creditors and auctioneers. He named Wainaina as one of those creditors, who had taken over a building, within Busia, which belonged to the deceased. He identified the deceased and the respondent as the initial shareholders and directors of the Company, who had equal shares. He stated that he held several meetings called by the deceased, where an accountant would be present. He stated that upon his demise, the family called him to a meeting, wherein it wanted to know his assets and liabilities.
 36. During cross-examination, he stated that the family meeting discussed about who was to take the place of the deceased in the Company, and they settled on PW1 and PW2, who subsequently visited his office and signed some documents. He asserted that the documents, meant for PW1, were in fact signed by PW2, who appeared to be the person driving the process. He stated that a dispute arose,



- after some of the family members sought to have the respondent reduce his shareholding from 50%, which he declined, prompting them to seek the services of another Advocate, to take action against the Company. He testified that in 2020, the deceased spoke to him about transfer of some of his property to the Company. He had lots of debts with Equity Bank, which tied the said property. He accompanied him to Kakamega, to visit PW9, the Advocate for Equity Bank. The charges were discharged. After that the deceased relinquished some of the shares to some members of his family, without touching the shares of the respondent.
37. After the transfer of the property to the company, the deceased advised the tenants to begin paying rents to the company, as their new landlord. He stated that he was the one who drafted the relevant notices. He asserted that he was the personal Advocate for the deceased, and that he saw him sign several documents, and that he was the one who used to deal with PW8, the Company Secretary. He stated that he saw the deceased sign documents at the chambers of PW9, to transfer his property to the company. He also stated that he used to accompany the deceased to such meetings, as he trusted his guidance on the documents to sign.
 38. Judgment was delivered, on 27th June 2025, acquitting the respondent. The court concluded that the entire case was founded on forgery, and hinged solely on the evidence of PW3, the document examiner. The court was not convinced that the said evidence proved the forgery alleged, underscoring that the evidence of an expert remains his opinion, which does not bind the court, and requires other independent evidence to corroborate it. It was found that the other evidence was not corroborative. The testimonies of PW6, the land registrar, and PW9, the Advocate who oversaw the transfer of the property of the deceased to the Company, were highlighted, as pointing away from any sort of fraudulent activity by the respondent. The defence was also found to be credible, particularly the testimonies of DW1 and DW4.
 39. The appellant was aggrieved, hence the instant appeal. The grounds revolve around the trial court acquitting whilst there was adequate evidence to convict; the evidence was not properly analysed; the prosecution case was ruled to be doubtful, yet it was strong credible and corroborated; the entire prosecution evidence was entirely disregarded; failure to find that the prosecution had proved its case beyond reasonable doubt; the acquittal was against the weight of the evidence; the trial court only focused on the defence evidence, to the isolation of the prosecution case; the evidence of PW1 and PW2 was unchallenged; material deficiencies and inconsistencies in the defence were not considered; the trial court delved into matters that were not relevant to ingredients of the offences charged; the trial was rushed; and the opinion of the document examiner was disregarded.
 40. The grounds were supplemented, by a subsequent set filed thereafter, on the basis that the wrong principles were applied to disregard the expert evidence; corroboration of expert evidence is not a requirement of the law; the right criteria was not applied to evaluate the expert evidence; whether the complainant had knowledge of the forgery after the fact was not one of the elements to be proved or disproved by the prosecution; the verdict was marred by assumptions that were not supported by the evidence on record; the court arrived at a conclusion on the opening and operating of a bank account in the name of the company which was contrary to the evidence; the trial was conducted hastily which rendered the proceedings a nullity; the defence was inconsistent and full of contradictions; no proper trial was conducted as the documents produced by the defence were not placed on record for proper evaluation; the prosecution was not given proper time to prepare for the defence hearing and its submissions were never considered by the trial court; the trial amounted to a rushed and unconsidered justice, and it was an unconstitutional process.
 41. Directions, on the disposal of the appeal, were given on 21st October 2025, for filing of written submissions, that were to be highlighted. Both sides complied, by filing their respective written



submissions, which I have read and noted the arguments made in them. The said written submissions were orally highlighted, on 3rd December 2025, by the Advocates for both sides.

42. The case against the respondent fell within the cluster of the theft-related offences known as fraud. As framed, in the charges, the fraud itself did not materialise, but was at the inchoate stage of conspiracy. The acts, that were yet to mature to fraud, were a series of alleged forgeries of documents, to actuate the intended fraud. The fraud was yet to happen; hence the respondent was charged with conspiracy to commit it. The conspiracy allegedly manifested itself in forgery, alleged to have been committed in 2 phases. Phase one was the alleged forgeries which facilitated the registration of a limited liability company, the Company, the purpose-vehicle for effecting the intended fraud. Phase two was forgeries which effected transfer of property, registered in the name of the deceased, to the purpose-vehicle, the company.
43. The principal offence charged was the conspiracy, while the secondary offences were the forgeries, which allegedly manifested the conspiracy. At the third level were the alternative charges of uttering false documents. For the conspiracy charge to hold, the forgery offences had to be proved. The respondent was the sole accused person, although it was pleaded that he was with undisclosed others not before the court. Conspiracy should be of 2 or more persons, for a person cannot conspire alone.
44. Proof of the forgery rested solely on the testimony of PW3, the document examiner or handwriting expert. The case had to stand or fall with that evidence. The criminal case collapsed, because the trial court did not believe that evidence. It considered it against the other evidence, and it was concluded that, in view of that other evidence, it could not stand.
45. The principal bone of contention, in this appeal, is the place of expert evidence, as against the rest of the evidence. All the other issues raised are secondary.
46. The trial court was of the view that the expert evidence was opinion evidence, which was not binding on it, and which required to be corroborated. The appellant counters that there is no legal requirement for corroboration of such evidence, and that the court erred in holding so. It has cited *Stephen Kinini Wang'ondu vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J), on the criteria for evaluating expert evidence, before accepting or rejecting it.
47. It was emphasised, in that decision, that opinion evidence is critical, but has to be considered alongside other evidence. The court went on to highlight why that should be so. For one, it does not trump other evidence, for it has to be tested against known facts or primary factual evidence. Secondly, it must not be considered in a vacuum. It ought not be separated from other evidence. It should provide a framework for considering other evidence. Thirdly, where there is conflicting expert opinion, it should be considered against the background of other evidence. Finally, all the evidence must be considered, before findings of fact are made. It was also stated that the quality of the evidence of the expert must be considered, in terms of its rationality and internal consistency, in relation to all the other evidence.
48. I doubt that *Stephen Kinini Wang'ondu vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J) helps the case of the appellant. The point that emerges is that expert evidence cannot stand on its own, it must be considered alongside the other evidence. The court, in *Stephen Kinini Wang'ondu vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J), talked of it being tested against known facts or primary factual evidence. Opinion evidence does not constitute known facts. It is an opinion of the expert, not a known fact. Indeed, it can be described as some form of speculation, clothed in scientific terms. The opinion cannot override a known fact. The opinion would carry some weight only upon being tested against the known facts.



49. The court, in *Stephen Kinini Wang'onde vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J), also talked of opinion evidence being tested against primary factual evidence. There are 2 things there. One, primary. Opinion evidence is not primary evidence, it has to be tested against primary evidence, before it can be accepted or rejected. Opinion evidence can only be secondary, since it is not factual, but an opinion of the expert. Two, factual. It is not a fact. A fact is primary in evidential terms; an opinion is not. What is secondary cannot override what is primary. In fact, the secondary is subservient to and dependent on the primary. It is secondary to the primary. There can be no secondary without primary. The secondary plays second fiddle to the primary.
50. The court, in *Stephen Kinini Wang'onde vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J), also stated that opinion evidence is not to be considered in a vacuum, neither should it be separated from the rest of the evidence. A vacuum denotes nothingness or emptiness. Opinion evidence cannot survive in a vacuum, for it has no life of its own. It is dependent on the primary evidence. Its probative value has to be assessed in the context of or against the background of the primary evidence. Without the primary evidence, which would denote existence of a vacuum, the opinion evidence would be useless. Opinion evidence would be useless, if separated from the rest of the evidence, or if considered exclusive of the primary or factual evidence. The other term used is framework, which refers to a basic underlying or supporting structure for the main. It would be a skeleton or outline. The framework or skeleton has no life, until the meat or fibre or muscle is fitted into it.
51. The bottom-line, from the matters discussed in *Stephen Kinini Wang'onde vs. The Ark Limited* [2016] KEHC 3449 (KLR) (Mativo, J), is that expert opinion evidence is mere opinion. It does not constitute concrete facts, which can bind the court. Its viability has to be gathered from the primary or factual evidence. That is what the trial court described as corroborative evidence. Opinion evidence cannot stand on its own, it has to be supported by other evidence, which is more superior, based on concrete facts.
52. In the context of the case at hand, whether the impugned signatures were real or false was not a matter within the knowledge of PW3. Only those who handled, firsthand, the papers or documents bearing those impugned signatures, could speak authoritatively on whether they were real or false. That would mean the deceased, who was alleged to be the "owner" of the impugned signatures, and the respondent, who uttered the documents which bore those signatures. It was only those 2 who knew the truth, and who could state, as a matter of fact, whether the same were genuine or forgeries.
53. PW3 could not speak, matter of factly, about their genuineness, given that she merely compared signatures of persons that she did not even know. She could only render her opinion, based on her evaluation, under microscope, of the signatures presented to her. For that reason, the opinion of PW3 could not be gospel truth. Its believability had to be evaluated from the context of the other evidence, or from the background of the known facts. It is that other contextual or background evidence, which is the basis for evaluating opinion evidence, that the trial court referred to as corroborative evidence.
54. I am persuaded that the trial court properly handled the opinion evidence, in its evaluation of the evidence tendered. It rightly observed that it was mere opinion, which was not binding on the court. The trial court evaluated the testimonies of the witnesses presented by the prosecution and the defence, and found that that other evidence, which was primary and factual, provided a background to the formation or incorporation of the Company, and explained the transfers of the property to the Company, and believed that evidence. The trial court had the benefit of seeing and hearing the witnesses firsthand, and it was best placed to judge the truthfulness, reliability and believability of the testimonies and the supporting documents submitted as exhibits. When the trial court tested the



- opinion evidence of PW3, as against the factual evidence of the other witnesses, that it had believed to be reliable and truthful, it was not persuaded that the opinion evidence was credible.
55. Stephen Kinini Wang'ondu vs. The Ark Limited [2016] KEHC 3449 (KLR) (Mativo, J) makes reference to the quality of the opinion evidence. The appellant has argued that that evidence was not analysed, before it was dismissed, suggesting that its quality was not properly evaluated. It is true. The judgement did not attempt to evaluate the quality of the opinion evidence.
 56. I have examined the 2 reports of the expert, put in evidence. The same only state that the signatures were examined and compared, and opinions were formed, based on that examination and comparison. No basis is given, in either report, of the conclusions drawn. No analysis is given of any particular or peculiar features or characteristics that were noted, which led to that conclusion. There is a general observation of what is usually considered, said to be dissimilarities and similarities, of individual characteristics, based on the form of the writing, pen movement, etc. What matters is, what were these dissimilarities and similarities? Were they identified? All there is are conclusions, that have not been justified, explained or accounted for.
 57. The conclusion, that I would draw, on the reports, is that they are of poor quality, for they do not identify the specifics, in the impugned signatures, that drove the expert to draw the conclusions that she purported to arrive at. It would not be enough, to merely state that the impugned signatures were examined and compared, then a conclusion was drawn on them, without stating why that conclusion was arrived at, or on what basis it was reached. In short, the reports lacked rationality.
 58. The appellant has argued that the testimonies of PW1 and PW2 were uncontroverted, given that the 2 were not subjected to cross-examination. Those 2 were the complainants. The primary case was about conspiracy to defraud. Their testimonies did not present any material which established that the respondent had conspired with anyone to defraud the estate. They presented no material, which pointed to the respondent, acting in concert or cahoots, with other identified or identifiable individuals, although not identified in the charges as accused persons, to do that which was alleged in the conspiracy charge.
 59. They equally presented no material, which pointed to the respondent creating false documents, through forgery, for the incorporation of the Company, and the transfer to the Company of the property of the deceased, which would have been a pointer to the conspiracy to defraud alleged. They only talked of the deceased mentioning to them that the respondent had forged his signatures with respect to certain documents. That evidence fell in the realm of hearsay. The evidence of PW3 was meant to render credence to that hearsay, but the same fell short, for the reasons that I have discussed above.
 60. On the trial being conducted hastily, to the extent that justice was not done, I would start with stating that one of the fair trial rights, under Article 50 of *the Constitution*, is the right to have the trial begin and conclude without unreasonable delay. The trial court complied with that constitutional imperative. Those Article 50 rights do not accrue to the Republic, but the accused person. The Republic is deemed to be fully ready for trial, once it decides to arraign a person in court, for purposes of prosecution. It cannot be heard to complain that the trial was rushed, or adequate time and facilities were not afforded to it, for the purpose of the trial or the defence.
 61. I have gone through the trial record, and I have not come across an incidence where the appellant requested for more time, to either prepare themselves or to do something, and that request was turned down by the court. The appellant has not demonstrated any prejudice, that it suffered, from the manner the trial was conducted, and I have not come across any incidence or circumstance of the same. Trial courts are expected to conduct trials on a day-to-day basis, where that is practicable. Trials only



delay or take long, in cases where the parties themselves, rather than the court, choose to drag or prolong them, by not adequately or properly preparing for them, or by seeking unnecessary adjournments.

62. I find the submission, that the trial was rushed or done hastily, something of a paradox. Whenever a trial is delayed, everyone would be in town, declaring how courts are incompetent, for taking years to complete trial, and, in the process occasion injustice to all involved. Now, when a court does the salutary thing, of diligently conducting a trial and concluding it within record time, instead of being feted, it is being vilified, for allegedly acting in haste, and causing injustice in the process. It would appear that the court is damned, either way.
63. Overall, I am not persuaded that the appeal herein is merited. I disallow it, and, I hereby dismiss it. The acquittal is hereby affirmed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON

THIS 24TH DAY OF FEBRUARY 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Chala Kasyoka, instructed by the Director of Public Prosecutions, for the appellant.

Mr. Wycliffe Okutta, instructed by Ouma-Okutta & Associates, Advocates for the respondent.

