

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. E029 OF 2021

DAVIS KIPNGENO
YEGON.....APPELLANT

VERSUS

REPUBLIC.....RESPON
DENT

(An appeal from the Judgment of the Chief Magistrate's Court at Kericho (Hon. S.M. Mokuu, CM) delivered on 19th October, 2021 in Kericho Chief Magistrate's Court Anti-Corruption Case No. E002 of 2020)

JUDGMENT

1. The Appellant, **Davis Kipngeno Yegon**, was charged before the Chief Magistrate's Court at Kericho with six (6) counts relating to corruption, forgery, and related offences. The charges arose from an incident on 31st July, 2018, when the Appellant, a public officer employed by the Bomet County Government, allegedly presented a fake Master's Degree Certificate in Business Administration (Marketing) purportedly issued by Egerton University to the Bomet County Public Service Board during an interview for the position of Assistant Director Procurement.

2. The Appellant pleaded not guilty to all counts on 11th November, 2020. After a full trial in which the prosecution called twelve (12) witnesses and produced numerous documentary exhibits, the learned trial magistrate (Hon. S.M. Mokuu, CM) delivered a judgment on 19th October, 2021, convicting the

Appellant on all six counts. The Appellant was sentenced to pay a cumulative fine of Kshs. 900,000/= , in default to serve one (1) year imprisonment. The fines were structured as follows:

- Counts 1-4: Kshs. 200,000/= each, in default 1 year imprisonment per count

- Counts 5-6: Kshs. 50,000/= each, in default 1 year imprisonment per count

3. Being aggrieved and dissatisfied with the said conviction, the Appellant lodged the instant appeal through a Notice of Appeal filed shortly after the judgment. The appeal is solely against the conviction, and the Appellant does not challenge the sentence imposed by the trial court.

4. The Appellant faced the following six (6) counts before the trial court;

Count I: Deceiving a public entity contrary to section 46(1)(b) as read with section 46(2) of the Leadership and Integrity Act, Cap 182 Laws of Kenya. The particulars were that on 31st July, 2018, at Bomet County, being a public officer, the Appellant knowingly deceived Bomet County Public Service Board by stating that he had a Master's Certificate in Business Administration (Marketing) purported to have been awarded to him by Egerton University on 9th December, 2016.

Count II: Providing false information to a public entity contrary to section 46(1)(d) as read with section 46(2) of the Leadership

and Integrity Act. The particulars were that on the same date and place, being a public officer, the Appellant knowingly provided false information to Bomet County Public Service Board by stating that he had a Master's Certificate in Business Administration (Marketing) purporting it to have been awarded to him by Egerton University on 9th December, 2016.

Count III: Making a false statement to a principal contrary to section 41(1) as read with section 48 of the Anti-Corruption and Economic Crimes Act (ACECA) . The particulars were that on the same date and place, being a public officer, the Appellant knowingly gave a false statement to his principal, the Bomet County Public Service Board, by stating that he had a Master's Certificate in Business Administration (Marketing) purporting it to have been awarded to him by Egerton University on 9th December, 2016.

Count IV: Giving a false document to a principal contrary to section 41(2) as read with section 48 of ACECA. The particulars were that on the same date and place, being a public officer, the Appellant knowingly gave to his principal, the Bomet County Public Service Board, a false Master's Certificate in Business Administration (Marketing) purporting it to have been awarded to him by Egerton University on 9th December, 2016.

Count V: Forgery contrary to section 349 of the Penal Code. The particulars were that on unknown dates and at some unknown place within the Republic of Kenya, jointly with others

not before court, the Appellant willfully and with intent to deceive, forged a Master's Certificate in Business Administration (Marketing) purporting it to be a Master's Certificate from Egerton University.

Count VI: Uttering a false document contrary to section 353 of the Penal Code. The particulars were that on the same date and place, jointly with others not before court, the Appellant fraudulently and with intent to deceive, knowingly uttered a Master's Certificate in Business Administration (Marketing) purporting it to be a Master's Certificate from Egerton University, a fact he knew was not true.

5. The Appellant pleaded not guilty to all counts, and his plea was duly entered by the trial court. He was released on bond terms of Kshs. 1,000,000/= with a surety of similar amount, or alternative cash bail of Kshs. 400,000/=.

6. The Appellant filed a Petition of Appeal dated 1st November, 2021, setting out seven (7) distinct grounds of appeal which I have keenly perused.

7. The Appellant prays that the appeal be allowed, the conviction be quashed, and the sentence be set aside.

8. The appeal was admitted to hearing before a single judge of this court on 27th November, 2025. The court directed the parties to file and exchange written submissions within thirty (30) days.

Both parties complied with these directions, filing their respective submissions though later than the stipulated time.

9. The prosecution's case was built around the recruitment process for the position of Assistant Director Procurement conducted by the Bomet County Public Service Board. A total of twelve (12) witnesses testified, and numerous documents were produced in evidence.

10. **PW1 - Joshua Kipkoech Terer** was the former Chairperson of the Bomet County Public Service Board, having served for six years until his retirement in July 2019. He testified that on 14th February, 2018, the Board advertised the position of Assistant Director Procurement through print and digital media. The advertisement appeared in the Star Newspaper of 14th February, 2018 (page 33), and was marked as PMFI-1. The minimum requirements included a Bachelor's degree in Supply Chain Management, a Master's degree in a relevant discipline, membership in a professional body (Kenya Institute of Supplies Management), five years' experience, and a Public Practitioner's licence.

11. According to PW1, applications were received online through the County portal. Shortlisted candidates were notified through print media on 25th July, 2018 (PMFI-3). The shortlist was also published on the County portal. An extract showing the shortlisted candidates (PMFI-4) revealed that the Appellant's name appeared as the first candidate for the Assistant Director position.

12. The interview was scheduled for 31st July, 2018. Candidates were required to sign an attendance sheet (PMFI-5), which showed four candidates with the Appellant being number one on the list. Candidates were also required to fill a declaration form (P. Exhibit 6) listing the documents they intended to rely on and declaring their authenticity.

13. PW1 testified that the Appellant presented several documents, including a Master's Degree certificate purportedly from Egerton University (P. Exhibit 7). Based on this document, the Appellant was awarded marks. PW1 produced his score sheet as P. Exhibit 9. However, before the appointment could be made, the Board received an anonymous tip-off that the certificate might be fake. The Board wrote to Egerton University for verification on 22nd August, 2018 (PMFI-10) and received a response on 23rd August, 2018 (PMFI-11) indicating that the certificate was not genuine. The matter was then referred to the Ethics and Anti-Corruption Commission (EACC) for investigation on 12th September, 2018 (PMFI-12).

14. Under cross-examination, PW1 made several important concessions;

- ***He admitted that he could not remember whether transcripts were submitted.***

- ***He confirmed that copies of transcripts had not been availed in court.***

· He stated that verification could only be conducted after the interview.

· He admitted that he could not specify the exact time when the Board learned of the fake nature of the documents.

· Critically, he admitted that he could not tell before whom the declaration form (P. Exhibit 6) was signed. He stated that the form was signed in the presence of the secretariat, but he did not know who processed the candidates or in whose presence the form was actually signed.

15. **PW2 - Eunice Cheronu Benson** was the Vice Chairperson of the Bomet County Public Service Board, having retired in June 2019. Her role involved deputizing the Chair in training and recruitment matters. She confirmed the advertisement and the shortlisting process. She testified that she was a panelist during the interviews and personally saw the Appellant's Master's degree certificate. She identified a copy of the certificate as PMFI-7 (later P. Exhibit 7). She also saw his Bachelor's certificate (PMFI-8a), KCSE certificate (PMFI-8b), and KCPE certificate (PMFI-8c).

16. PW2 described the scoring system; KCSE (5 points), Bachelor's Degree (10 points), Master's Degree (15 points). She scored the Appellant 79 marks and produced her score sheet as P.

Exhibit 13. She confirmed that the Appellant passed the interview, though she did not recall him being notified of the outcome.

17. Under cross-examination, PW2 stated;

- ***She recalled that the Appellant presented four documents at the interview, including a Master's degree and transcripts from Egerton University.***

- ***She was not aware if those transcripts had been availed in court.***

- ***She confirmed that the office of the secretary received copies that had been submitted online, and shortlisting was done in a meeting.***

- ***She confirmed that the Appellant was an employee of Bomet County at the time of the interview.***

- ***She stated that the anonymous information about the fake certificate came from the public domain during the time of the interviews.***

- ***She could not name the officer who witnessed the execution of the declaration form.***

18. It is noteworthy that PW2's testimony that the Appellant submitted transcripts from Egerton University directly contradicted PW1's testimony that no transcripts were submitted. This contradiction was never resolved by the prosecution.

19. **PW3 - Justus Kibet Langat** was a member of the Board and a panelist. He testified that he filled his score sheet on 31st July, 2018, awarding the Appellant 84 marks. He produced his score sheet as P. Exhibit 14. Under cross-examination, he admitted that the score sheet did not indicate which university issued the Master's degree. He also admitted that he did not see transcripts from Kenyatta University.

20. **PW4 - Pastor Joseph Kipkurui Rono** was a pastor, farmer, and Board member. He testified that he saw the Appellant's academic documents, including the Master's degree certificate. He produced his score sheet as P. Exhibit 15. Under cross-examination, he admitted that the application form did not indicate the university from which the Master's degree was earned.

21. **PW5 - Judith Chepngetich Siele** was a former Board member from 2013 to 2019. She testified that before awarding scores, she perused the original documents. She scored the Appellant 89 marks and produced her score sheet as P. Exhibit 16. Under cross-examination, she confirmed that all board members checked the documents, but she could not name the officer who witnessed the execution of the declaration form.

22. **PW6 - Professor James Kiprop Tuitoek** was a former lecturer at Egerton University from 1989 to 2019. He served as Vice Chancellor from January 2006 to January 2016. His role included being Chairman of the University Senate, responsible for

admissions, curriculum approval, student progression, and approving the graduation list.

23. PW6 explained the certificate issuance process; once the Senate approves a student, the name is sent to the University Council for inclusion in the graduation list. The Vice Chancellor, Deputy Vice Chancellor (Academic Affairs), and Registrar (Academic Affairs) then sign the certificates.

24. PW6 stated that his term ended on 12th January, 2016, and he handed over to Professor Rose Mwonya. From that day, he ceased being a signatory to university certificates.

25. On 2nd February, 2019, EACC officers visited him and requested verification of a certificate in their possession. He was shown a certificate (P. Exhibit 7), a Master's Degree in Business Administration (Marketing option), purportedly from Egerton University, issued on 9th December, 2016.

26. PW6 noted several anomalies;

· Signatory Issue; The certificate was issued on 9th December, 2016, but he had handed over the Vice Chancellor position on 12th January, 2016. Therefore, he should not have been a signatory. However, the certificate bore a signature that looked like his.

· Admission Number; The certificate bore admission serial number CM 11/200236/16. Normally, admission numbers are assigned based on the year of joining. The

number "16" suggested the student joined in 2016 and graduated in the same year. Admissions typically happen in September, and graduations in December of the same year. He noted that the first student admission serial for that program should have been CM11/2001. The number on the certificate (200236) far exceeded the normal admission range for the MBA program.

· Impossible Timeline; It was impossible for a student admitted in September 2016 to graduate in December 2016, as the MBA program takes two years.

· No MBA Marketing Option in 2014; Crucially, in 2014, while he was still Vice Chancellor, the university did not admit students for the MBA (Marketing option) because they could not meet the required quorum. Therefore, it would have been impossible for a student admitted in 2014 to graduate in 2016 with that specialization.

· Graduation Booklet; He examined the graduation booklet for 2016. In the Faculty of Commerce section, there were 20 MBA candidates, 5 in Finance and 2 in Human Resource. There was no "Marketing" option listed. The Appellant's name did not appear anywhere. The booklet was produced as P. Exhibit 17.

27. Under cross-examination, PW6 admitted that he could not confirm whether the certificate shown to him was an original or a

copy. He also stated that he was not aware if the Appellant had ever sought verification from the university himself.

28. **PW7 - Seth Fredrick Ochieng Omollo** was the Academic Registrar at Egerton University. He confirmed that he kept records of students up to graduation. He examined the certificate and noted that the registration number was irregular, the signature font was not what the university used, and the signature appeared to have been lifted by a computer. He confirmed that the university did not offer MBA (Marketing) option in 2016.

29. **PW8 - Mwana Amisi Said** was the Deputy Registrar in 2016. Her role included maintaining students' records and processing certificates. She confirmed that the certificate did not originate from Egerton University. She noted that an MBA degree normally takes two years, but the Appellant's certificate showed admission in 2016 and graduation in the same year. Further, there were no students admitted to the MBA (Marketing) option during that period.

30. **PW9 - Philip Kipkurui Tanui** was the Secretary to the Bomet County Public Service Board. His role included taking minutes during Board sittings. He confirmed that the Appellant was an employee of Bomet County Government. He produced various documents from the Appellant's personal file, including:

- ***Letter of appointment (P. Exhibit 18a)***
- ***Application form for employment (P. Exhibit 18b)***

- ***Payroll documents***
- ***KRA PIN certificate***
- ***Correspondence between Bomet County and Egerton University***
- ***Letter from Board to EACC (P. Exhibits 10, 11, and 12)***

31. Under cross-examination, PW9 stated that he only received copies of the documents submitted by the Appellant, including the impugned certificate, from the Board's Chair. He could not name the person who witnessed the execution of the declaration form. Crucially, PW9 admitted that the Appellant had declared to his employer (Bomet County Government) that he was a graduand of Kenyatta University-MBA.

32. **PW10 - Professor Ruth Awuor Mwonya** was the Vice Chancellor who succeeded PW6 on 12th January, 2016. She examined the certificate and confirmed it was not issued by the university. She explained that the university applies signatures electronically after verification, but the signature on the certificate was irregular.

33. **PW11 - Stephen K. Yego** was a forensic document examiner with the EACC. He had been a government forensic examiner since 2009 and joined EACC in 2015. His duties included examination of handwriting and signatures. On 20th March, 2019, he received documents from PW12 for examination. These

included; A1: A letterhead of the County Government of Bomet Public Service Board with details of the Appellant, A2: A letterhead from the County Government of Bomet dated 31st August, 2018 and B1 - B4: Specimen handwriting and signatures of the Appellant.

34. His examination revealed that the handwriting and signatures on A1 and A2 matched the specimens. He produced his report dated 30th March, 2019 as P. Exhibit 21. On 17th December, 2019, he received further exhibits, including; A3: A certified copy of the Master's degree certificate (P. Exhibit 7), B4 - B5: Specimen handwriting of Professor James Tuitoek, B6 - B8: Specimen handwriting and signatures of Professor Rose Mwonya and B9 - B10: Specimen handwriting and signatures of Seth Fredrick Owino.

35. His examination revealed that the signatures on the certificate matched the specimens of the respective individuals. However, he noted that the signatures on the certificate were electronically generated and not physically signed. He produced his second report dated 24th December, 2019 as P. Exhibit 22.

36. Under cross-examination, PW11 made significant concessions; He admitted that there were variations between the specimen and the questioned documents. When pressed on specific variations, he could not highlight them in detail.

37. **PW12 - Roseline Atieno Omondi** was the investigating officer from EACC, having joined in 2015. The investigation began following the letter from the Board dated 12th September, 2018.

38. PW12 testified that she wrote to various institutions to verify the Appellant's academic documents;

KNEC: Confirmed KCPE and KCSE certificates were genuine. She produced the report as P. Exhibit 31 and the certificates as P. Exhibits 8b and 8c.

Moi University: Confirmed the Bachelor's degree was genuine. She produced the response as P. Exhibit 34 and the certificate as P. Exhibit 8a.

Kabianga University: Confirmed records, as a constituent of Moi University. She produced letters as P. Exhibits 32, 33, and 35.

Egerton University: Responded that the certificate did not originate from them. She produced the letter from EACC to Egerton as P. Exhibit 36 and the response as P. Exhibit 37.

39. PW12 obtained the contents of the Appellant's personal file from the Board, including his letter of appointment, biodata form, deployment letter, pay slips, and a letter from the Appellant to HR dated 20th April, 2015 (P. Exhibit 30). The enclosures in that letter included a copy of the Master's degree certificate, which was certified by the Board secretary and produced as P. Exhibit 7.

40. PW12 testified that when she interviewed the Appellant, he denied submitting the Egerton University certificate and instead claimed he was pursuing a Master's degree at Kenyatta University. He provided an admission letter dated January, 2013 (P. Exhibit 39) and provisional academic transcripts dated 8th June, 2015 (P. Exhibits 40a-40c).

41. Under cross-examination, PW12 made crucial admissions; She could not identify the person who witnessed the execution of the declaration form. She admitted that she never checked the documents the Appellant submitted online. She conceded that the EACC declaration form cited in the data capture form would ordinarily set out the documents submitted by an applicant. She confirmed that no transcripts from Egerton University were submitted. She admitted that the appellant indicated he was pursuing a Master's degree at Kenyatta University.

42. The Appellant gave an unsworn statement in his defence on 23rd July, 2021. He did not call any witnesses. The Appellant stated that he was a procurement officer by profession from Bomet County. He applied for the position online in May 2018 and uploaded his documents, which included; MBA transcripts from Kenyatta University, Moi University certificate and transcripts, KCSE and KCPE certificates and other testimonials.

43. He stated that he was shortlisted and attended the interview on 31st July, 2018. He maintained that he never submitted a Master's degree certificate from Egerton University. He asserted

that he was still pursuing his Master's degree at Kenyatta University and had only submitted transcripts from that institution. He further stated that before entering the interview room, he signed a registration form containing his name, date, and the time he was ushered in. However, he did not fill or sign any declaration form listing the Egerton University certificate.

44. Learned counsel for the Appellant, Mr. Caleb C. Koech, filed written submissions arguing that the prosecution failed to prove its case beyond reasonable doubt. Counsel condensed the seven grounds of appeal into one main issue; whether the prosecution proved its case against the Appellant beyond reasonable doubt.

45. Counsel submitted that the prosecution failed to tender crucial evidence, particularly the online application form and the documents the Appellant attached thereto. This omission was fatal, as it would have shown what documents the Appellant actually submitted at the application stage.

46. Regarding the declaration form (P. Exhibit 6), counsel submitted that; the form did not indicate which university issued the Master's degree and that no witness could identify the person who witnessed the Appellant's signature on that form. He further submitted that the failure to call the witnessing officer violated the principle in ***James Omondi Were v Republic [2014] eKLR***, where it was held that failure to call a material witness leads to an inference that their evidence would have been adverse to the prosecution.

47. On the expert evidence (PW11), counsel argued; PW11 admitted there were variations in the handwriting. That he failed to specify the particular features he relied on to reach his conclusion and his evidence was general and inconclusive.

48. Citing Samson ***Tela Akute v Republic [2006] eKLR*** and ***Republic v Podmore (1930)***, counsel submitted that expert evidence is merely opinion and must be subjected to independent evaluation by the court. Where the expert fails to detail the similarities and differences, such evidence is of little probative value.

49. Counsel further highlighted material contradictions in the ***prosecution's case;***

- ***PW1 testified that no transcripts were submitted.***

- ***PW2 testified that the Appellant submitted transcripts from Egerton University.***

- ***This contradiction was never resolved and creates doubt as to what documents the Appellant actually presented.***

50. Counsel further submitted that the Appellant had consistently maintained that he was enrolled at Kenyatta University, a fact confirmed by;

- ***Documents in his personal file (P. Exhibits 39 and 40a-c)***

· PW9's admission that the Appellant had declared his Kenyatta University enrolment to his employer

· PW12's own evidence that the Appellant provided Kenyatta University documents during investigation.

51. Counsel argued that it would be illogical for the Appellant to have disclosed his Kenyatta University enrolment to his employer and then turn around and present a fake Egerton University certificate. This inconsistency should have created reasonable doubt in favour of the Appellant.

52. Counsel also noted that the online application and attached documents were never produced. PW12 admitted she did not check the online application. This omission meant that the court could not determine what documents the Appellant originally submitted.

53. Finally, counsel submitted that the last two counts, forgery and uttering, were hinged on the main charges and could not stand if the main charges failed.

54. Counsel prayed that the appeal be allowed, the conviction quashed, and the Appellant set at liberty.

55. Learned Prosecution Counsel, Mr. Anthony K. Ndung'u, filed submissions on behalf of the Respondent opposing the appeal and urging the court to uphold the conviction.

56. He submitted that the prosecution proved beyond reasonable doubt that the Appellant presented a fake Master's degree certificate. The testimony of the six panelists (PW1-PW5 and PW9) was consistent that the Appellant presented the certificate and was awarded marks based on it. Their evidence was corroborated by the score sheets (P. Exhibits 9, 13, 14, 15, and 16).

57. Regarding the declaration form, counsel argued;

- ***The Appellant's authorship was confirmed by the document examiner (PW11).***

- ***The fact that the witnessing officer was not called was immaterial, as the Appellant's handwriting and signature were proved through expert evidence.***

- ***The prosecution is not required to call a superfluity of witnesses, but only those necessary to establish the charge (citing *Bukenya & Others v Uganda [1972] EA 549*).***

58. On the expert evidence, counsel submitted;

- ***PW11's evidence was clear and cogent. He explained the basis of his opinion, including character formation, pen pressure, and alignment.***

- ***The variations noted were natural and did not detract from his conclusion.***

- ***In *John Munyao Nzukie v Republic [1993] KECA 85 (KLR)*, the Court of Appeal held that an expert may properly***

testify that two handwritings are so similar as to be indistinguishable.

· The Appellant did not call any expert witness to rebut PW11's findings.

59. On the contradiction between PW1 and PW2 regarding transcripts, counsel submitted that this was a minor inconsistency that did not go to the core of the prosecution's case. The key issue was whether the Appellant presented the fake certificate, which was proved by overwhelming evidence.

60. Counsel further submitted that the evidence from Egerton University staff (PW6, PW7, PW8, PW10) was unequivocal:

· The certificate was a forgery.

· The Appellant was never a student at Egerton University.

· The MBA (Marketing) option was not offered in 2014, so there

could be no graduates in 2016.

· The Appellant's name did not appear in the graduation booklet.

61. On the Appellant's claim that he was pursuing a Master's degree at Kenyatta University, counsel submitted that this did not negate the possibility that he also presented a fake Egerton

certificate. Human beings are capable of such contradictions, especially when driven by the desire to secure employment.

62. Counsel prayed that the appeal be dismissed in its entirety and the conviction affirmed.

63. This being a first appeal, this court has a duty to re-evaluate and re-analyze the evidence adduced before the trial court afresh, and to draw its own conclusions, while bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses. This principle is well settled in our jurisprudence. In **Mark Oiruri Mose v Republic [2013] KECA 67 (KLR)**, the Court of Appeal stated;

"It has been said over and over again that the first appellate court has the duty to revisit the evidence tendered before the trial court, afresh analyse it, evaluate it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence, and should therefore make allowance for that."

64. Similarly, in **Okeno v Republic [1972] EA 32**, the Court of Appeal for East Africa 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 to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions."

65. Guided by these principles, I shall proceed to re-evaluate the evidence on record, consider the grounds of appeal, weigh the submissions by counsel, and render a determination.

66. From the grounds of appeal and the submissions by counsel, the following issues arise for determination:

(i) Whether the declaration form (P. Exhibit 6) was properly proved,

(ii) Whether the expert evidence of PW11 was reliable and conclusive,

(iii) Whether the material contradiction between PW1 and PW2 created reasonable doubt.

(iv) Whether the failure to produce the online application and attached documents was fatal to the prosecution's case.

(v) Whether the Appellant's defence, raised reasonable doubt.

(vi) Whether the trial magistrate properly evaluated the defence case and the gaps in the prosecution's evidence.

(vii) Whether, on the totality of the evidence, the conviction was safe.

67. I will first deal with Ground 2, as it goes to the heart of the prosecution's case. The prosecution relied heavily on the declaration form (P. Exhibit 6) to link the Appellant to the impugned Master's degree certificate. According to the evidence, this form was filled by candidates outside the interview room and was witnessed by a member of the Board's secretariat.

68. The evidence regarding the execution of this form is troubling. None of the prosecution witnesses could identify the person who witnessed the Appellant's signature on this form. I can now examine the testimony of each witness on this point in detail;

· PW1 (Joshua Kipkoech Terer): Under cross-examination, he admitted that he could not tell before whom the declaration form was signed. He stated that the declaration form was signed in the presence of the secretariat, but he did not know who processed the candidates or in whose presence the form was actually signed. This admission is significant because PW1 was the Chairperson of the Board and presumably oversaw the entire recruitment process.

· PW2 (Eunice Cheronu Benson): When asked about the witnessing officer, she could not name the person who witnessed the execution of the declaration form. She

merely stated that the forms were handled by the secretariat.

· PW3 (Justus Kibet Langat): He could not name the witnessing officer.

· PW4 (Pastor Joseph Kipkurui Rono): He could not name the witnessing officer.

· PW5 (Judith Chepngetich Siele): She could not name the witnessing officer.

· PW9 (Philip Kipkurui Tanui): As the Secretary to the Board, one would expect him to know who handled the forms. However, he too could not name the witnessing officer.

· PW12 (Roseline Atieno Omondi): The investigating officer admitted that she could not tell the person who handed over the registration forms, and could not name who witnessed the execution of the declaration forms.

69. The prosecution did not call the person who witnessed the execution of the declaration form. No explanation was offered for this failure. The witnessing officer was a material witness. He or she was the only person who could testify as to;

· The circumstances under which the declaration form was filled.

· ***Whether the Appellant indeed listed the Egerton University certificate on the form.***

· ***Whether any coercion, mistake, or irregularity occurred during the filling of the form.***

· ***Whether the Appellant was given an opportunity to review the form before signing.***

· ***Whether the form was filled in the presence of the witnessing officer or elsewhere.***

· ***Whether the Appellant was asked to confirm the accuracy of the information on the form.***

70. The importance of this witness cannot be overstated. The declaration form was the primary documentary evidence linking the Appellant to the impugned certificate. Without the testimony of the witnessing officer, the court cannot be certain that the form was properly executed and accurately reflected the documents the Appellant intended to present.

71. In ***James Omondi Were v Republic [2014] eKLR***, the Court of Appeal held;

"The failure of the prosecution to call the above important prosecution witnesses naturally leads to the inference that their evidence would be adverse or contradict the prosecution evidence on record."

72. This principle was also affirmed in *Bukenya & Others v Uganda* [1972] EA 549, where the court stated;

"The prosecution must make available all witnesses necessary to establish the truth, even if their evidence may be inconsistent. Where the evidence called is barely adequate, the court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution."

73. In *Mwangi v Republic* [1984] KLR 595, the Court of Appeal held that the prosecution has a duty to call all material witnesses, and failure to do so without adequate explanation may lead to an inference that their evidence would have been unfavorable to the prosecution.

74. In the instant case, the evidence called was "barely adequate" on this crucial point. The inference is irresistible that had the witnessing officer been called, their evidence would have been adverse to the prosecution's case. Perhaps they would have testified that the Appellant did not list the Egerton University certificate, or that the form was filled under questionable circumstances, or that the Appellant protested the contents of the form. We will never know, because the prosecution chose not to call them.

75. The trial magistrate erred in relying on the declaration form without requiring the prosecution to call the witnessing officer or

offering an explanation for their absence. This error fatally weakens the prosecution's case. I find that Ground 2 of the appeal succeeds.

76. The Appellant also challenged the expert evidence of PW11, the forensic document examiner. PW11 concluded that the handwriting and signature on the declaration form (P. Exhibit 6) matched those of the Appellant.

77. Under cross-examination, PW11 made several important concessions. He admitted that there were variations between the specimen and the questioned document. This admission is crucial because it acknowledges that the handwriting was not identical. When pressed on the specific variations, he could not highlight them in detail. He was unable to point to particular letters or features that differed and explain why those differences were merely natural variations rather than indications of different authors. He did not highlight the specific attributes of what he generally termed as similarities so as to discount the variations he himself admitted were present. In essence, he asked the court to accept his conclusion without providing the detailed analysis necessary to support it.

78. PW 11 confirmed that the signature on the Master's degree certificate itself was electronically generated and not physically signed. This means that even if the Appellant authored the declaration form, the link between the Appellant and the actual forging of the certificate was not established. The certificate could

have been generated by someone else and simply presented by the Appellant.

79. The law on expert evidence is well settled. In ***Samson Tela Akute v Republic [2006] eKLR***, the Court of Appeal cited with approval the English case of ***Republic v Podmore (1930)***, where it was stated;

"Let me say a word about handwriting experts. Let everyone be treated with proper respect, but the evidence of handwriting experts is sometimes misunderstood. A handwriting expert is not a person who tells you, this is the handwriting of such and such a man. He is the person who, habituated to the examination of handwriting, practiced in the task of making minute examination of handwriting, directs the attention of others to things which he suggests are similarities. That and no more than that, is his legitimate province."

80. The Court in ***Akute*** further held;

"We would have expected that the expert would have explained to the Court in detail the particular features of similarity or dissimilarity regarding characteristics of the signatures and the pen lift so that the Court could be in a position to appreciate the weight of his technical evidence and on examining the said characteristics would have assisted him arrive at his own opinion. Further by the

expert using the word 'etc' he alludes to some other features he did not disclose to the Court. This rather casual approach to an otherwise serious matter is unsatisfactory."

81. In the present case, PW11's evidence was precisely of this nature. He spoke in generalities, failed to specify the particular features he relied on, and admitted to variations without explaining why they were not significant. When asked about specific variations, he could not provide details. His approach was unsatisfactory and fell short of the standard expected of an expert witness.

82. Moreover, as held in ***Akute***, the opinion of an expert is not binding on the court. The court must examine the documents itself and come to its own conclusion. The trial magistrate did not do so. He simply accepted PW11's opinion without independent evaluation. The judgment does not show any attempt by the trial magistrate to examine the handwriting and signatures himself and form his own opinion. This was an error.

83. In ***R v Hinds (1962) 3 WIR 191***, the court stated that expert evidence should be received with caution and should be tested against the rest of the evidence. The trial magistrate did not test PW11's evidence against the other evidence, particularly the contradiction between PW1 and PW2 and the Appellant's defence.

84. The Appellant did not call an expert witness to rebut PW11's findings. However, the burden of proof never shifts from the prosecution. The prosecution must prove its case beyond reasonable doubt, regardless of whether the defence calls evidence. The weaknesses in PW11's evidence were exposed during cross-examination, and the trial magistrate ought to have approached this evidence with caution.

85. I find that the trial magistrate erred in placing undue weight on inconclusive expert evidence. Ground 3 of the appeal succeeds.

86. The Appellant highlighted a material contradiction between the testimonies of PW1 and PW2;

· PW1 testified that the Appellant submitted a Master's degree certificate from Egerton University, but no transcripts were submitted. Under cross-examination, he was categorical that no transcripts were submitted.

· PW2 testified that the Appellant submitted a Master's degree certificate and transcripts from Egerton University. She stated this clearly during cross-examination and did not waver.

87. This contradiction is not minor or trivial. It goes to the very documents the Appellant allegedly presented. The presence or absence of transcripts is significant because; transcripts would provide additional proof that the Appellant had actually

undertaken studies at Egerton University. The absence of transcripts might suggest that the Appellant only had the certificate, which could have been obtained without actual study. If transcripts were submitted, they would have provided additional material for verification by Egerton University.

88. If the Appellant submitted transcripts, then where are they? Why were they not produced in evidence? If he did not submit transcripts, why did PW2, a senior member of the Board and Vice Chairperson, claim he did? The prosecution did not resolve this contradiction, and the trial magistrate did not address it in the judgment.

89. In ***Erick Onyango Ondeng v Republic [2014] eKLR***, the Court of Appeal stated;

"It is trite law that contradictions in evidence of prosecution witnesses that are not resolved in favour of an accused person, and which are material, would ordinarily result in the evidence of the prosecution being rejected."

90. In ***Joseph Maina Mwangi v Republic [2000] KLR***, the Court of Appeal held;

"In any trial there are bound to be discrepancies. The court has to consider whether the discrepancies are so fundamental as to cause a miscarriage of justice or prejudice the appellant. If they

are not, the court can still convict, but if they are, then the prosecution case is rendered unsafe."

91. Similarly, in ***Njoroge v Republic [1983] KLR 197***, the Court of Appeal held that grave contradictions in the evidence of prosecution witnesses, unless satisfactorily explained, will usually result in the evidence being rejected.

92. In this case, the contradiction between PW1 and PW2 is fundamental. It goes to the core of what documents the Appellant presented. If the Appellant submitted transcripts from Egerton University, that would support the prosecution's case that he was claiming to have studied there. If he did not, then the only evidence linking him to Egerton University is the certificate itself, which could have been presented without his knowledge.

93. This contradiction was never resolved, and it creates reasonable doubt as to the exact nature of the documents the Appellant presented. Grounds 1, 4, and 7 succeed on this basis.

94. The Appellant also complained about the failure to produce his online application and the documents attached thereto. PW12 admitted that she never checked the documents the Appellant submitted online. This was a critical omission. The online application would have shown what documents the Appellant originally submitted at the application stage. This is important because; If the Egerton University certificate was not among the documents uploaded online, it would strongly support the

Appellant's defence that he never intended to rely on it and that it might have been inserted later. If it was among the online documents, that would corroborate the prosecution's case and weaken the Appellant's defence. The online application would provide a contemporaneous record of what the Appellant claimed to have at the time of application, before any alleged forgery or manipulation could have occurred.

95. The prosecution cannot pick and choose which evidence to present. They must present all material evidence, whether it favours their case or not. In ***Ahmed v Republic [2016] eKLR***, the court held;

"The prosecution is under a duty to call all material witnesses who are necessary to prove its case. Failure to call a material witness leads to an inference that the evidence of that witness would have been adverse to the prosecution."

96. While this principle often applies to witnesses, it can equally apply to documentary evidence. The online application was a material document. Its absence leaves a gap in the evidence and creates doubt as to what the Appellant actually submitted.

97. In ***Kariuki v Republic [1985] KLR 501***, the Court of Appeal held that where the prosecution fails to produce material evidence, the court is entitled to draw an inference that such evidence would have been unfavorable to the prosecution.

98. In this case, the failure to produce the online application and attached documents, coupled with PW12's admission that she never checked them, entitles this court to draw an inference that those documents would have been adverse to the prosecution's case. Grounds 1, 4, and 7 succeed on this basis as well.

99. The Appellant's defence was consistent, he was pursuing a Master's degree at Kenyatta University, not Egerton University. He maintained that he never submitted any certificate from Egerton University and had only presented Kenyatta University transcripts.

100. This defence was supported by documentary evidence that was actually produced by the prosecution;

P. Exhibit 39: Admission letter from Kenyatta University dated January, 2013. This letter proves that the Appellant was admitted to Kenyatta University for a Master's degree program.

P. Exhibits 40a-40c: Provisional academic transcripts from Kenyatta University dated 8th June, 2015. These transcripts show that the Appellant had completed coursework.

PW9's testimony: The Secretary to the Board admitted that the Appellant had declared his Kenyatta University enrolment to his employer (Bomet County Government). This means that his employer was aware of his academic pursuits.

PW12's own evidence: When interviewed by EACC, the Appellant immediately provided these Kenyatta University documents, demonstrating consistency in his defence.

101. The trial magistrate dismissed this evidence, stating in the judgment that the Appellant's claim of Kenyatta University enrolment did not negate the possibility that he also presented a fake Egerton certificate. With respect, this reasoning is flawed for several reasons.

102. First, the Appellant's consistent position was that he had only submitted Kenyatta University transcripts. He never claimed to have an Egerton University certificate, nor did he claim to have both. The prosecution's case was that he presented an Egerton certificate; the Appellant's case was that he did not. The question is not whether he could have presented both, but whether the prosecution proved that he presented the Egerton certificate at all.

103. Second, the fact that he had legitimate Kenyatta University documents in his personal file, and had disclosed his enrolment to his employer, makes it illogical that he would also present a fake Egerton certificate. Why would he risk his career, his reputation, and potential criminal prosecution with a fake certificate when he had legitimate proof of ongoing studies at Kenyatta University? If he had merely presented his Kenyatta University transcripts, he would have been scored on the basis of ongoing studies, perhaps with lower marks, but he would not have faced criminal charges.

104. Third, human behaviour must be considered in the context of rationality. While people sometimes act irrationally, courts should be cautious before imputing irrational behaviour to an accused person, especially when there is a rational explanation consistent with innocence. The Appellant's explanation that he only presented Kenyatta University documents and that the Egerton certificate was not his is rational and consistent with the evidence.

105. In ***Woolmington v Director of Public Prosecutions [1935] AC 462***, the House of Lords established the golden thread of English criminal law; the prosecution must prove the guilt of the accused, and the accused is entitled to the benefit of any reasonable doubt.

106. In ***Saidi v Republic [1965] EA 400***, the Court of Appeal for East Africa held that the accused's defence must be considered alongside the prosecution's evidence, and if there is a reasonable possibility that the defence is true, the accused must be acquitted.

107. In this case, the Appellant's defence, supported by documentary evidence, creates a reasonable doubt. It is reasonable to ask; if the Appellant was genuinely pursuing a Master's degree at Kenyatta University and had declared this to his employer, why would he present a fake certificate from Egerton University? The prosecution offered no explanation for

this apparent contradiction, and the trial magistrate did not properly consider this point.

108. The investigating officer (PW12) did not investigate the possibility of the Egerton certificate having been maliciously inserted into the Appellant's records. This was a failure of investigation that further weakens the prosecution's case. In a matter where the accused maintains his innocence and points to a possible alternative explanation, the prosecution has a duty to investigate that possibility. Failure to do so leaves a gap in the evidence and supports the inference of reasonable doubt. Grounds 5 and 6 succeed on this basis.

109. The trial magistrate's judgment shows a detailed summary of the prosecution's evidence but a superficial treatment of the defence case. This is evident from the following;

- The judgment runs to several pages, with most of it dedicated to summarizing the testimony of prosecution witnesses.
- The Appellant's defence is summarized in a few short paragraphs.
- The trial magistrate did not address the failure to call the witnessing officer.
- The trial magistrate did not address the weaknesses in PW11's expert evidence.
- The trial magistrate did not address the contradiction between PW1 and PW2.

- The trial magistrate did not address the failure to produce the online application.
- The trial magistrate did not properly consider the exculpatory evidence from Kenyatta University.

110. In ***Odhiambo v Republic [2008] KLR***, the Court of Appeal held;

"The duty of the trial court is to consider all the evidence, both for the prosecution and for the defence, and to evaluate it properly. Failure to consider the defence evidence or to give reasons for rejecting it may lead to the conviction being quashed."

111. In ***Kiarie v Republic [1984] KLR 739***, the Court of Appeal stated that the trial court must give reasons for rejecting the defence, and failure to do so may lead to the conviction being set aside.

112. In this case, the trial magistrate did not give adequate reasons for rejecting the Appellant's defence. He simply stated that the defence did not negate the possibility that the Appellant presented the Egerton certificate. This was not a proper evaluation of the defence case. The trial magistrate failed in his duty to properly evaluate the evidence as a whole. Ground 4 succeeds on this basis.

113. It is a fundamental principle of our criminal justice system that the burden of proof rests on the prosecution throughout the

trial. The accused does not have to prove his innocence. In ***Miller v Minister of Pensions [1947] 2 All ER 372***, Lord Denning explained the standard of proof;

"Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted forceful possibilities to deflect the course of justice. If the evidence is so forceful against a man to leave only a remote possibility in his favour which can be dismissed with the sentence, 'of course it is possible but not in the least probable,' the case is proved beyond reasonable doubt but nothing short of that will suffice."

114. In this case, the evidence was not "so forceful" as to leave only a remote possibility in the Appellant's favour. To the contrary;

- The declaration form linking him to the certificate was not properly proved due to the missing witness. This is not a remote possibility; it is a fundamental gap in the evidence.
- The expert evidence linking him to the declaration form was inconclusive and lacked specificity. This is not a remote possibility; it is a weakness in the core evidence.
- There was a material contradiction between PW1 and PW2 regarding transcripts. This is not a remote possibility; it is an unresolved inconsistency that goes to the heart of the case.
- The online application was not produced, and PW12 admitted she did not check it. This is not a remote

possibility; it is a significant omission that leaves a gap in the evidence.

- The Appellant had a consistent defence supported by documentary evidence that he was enrolled at Kenyatta University. This is not a remote possibility; it is a coherent alternative explanation supported by evidence.
- The investigating officer did not explore the possibility of malicious insertion of documents. This is not a remote possibility; it is a failure to investigate a plausible alternative explanation.

115. These gaps and contradictions create a real and substantial doubt, not a fanciful or remote one. The Appellant was entitled to the benefit of that doubt.

116. In the end, the Appeal well founded. It is allowed.

(a) The conviction by the Chief Magistrate's Court at Kericho in Kericho Chief Magistrate's Court Anti-Corruption Case No. E002 of 2020 is hereby quashed.

(c) The sentence is hereby set aside.

(d) The Appellant, DAVIS KIPNGENO YEGON, is set free forthwith unless otherwise lawfully held.

It is so ordered.

**Dated, signed and delivered at Kericho this 19th day
of March, 2026**

.....
J. K. SERGON
JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor - Kimaru

Appellant - Present in Person

Kipkorir holding brief for Koech for Appellant