



**Muthiani & 6 others v Republic (Criminal Appeal E062, E063, E064, E065, E066, E067 & E068 of 2021 (Consolidated)) [2025] KEHC 11628 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11628 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL APPEAL E062, E063, E064, E065, E066, E067 & E068 OF 2021 (CONSOLIDATED)**

**EN MAINA, J**

**JULY 31, 2025**

**BETWEEN**

**PETER KIETI MUTHIANI ..... 1<sup>ST</sup> APPELLANT  
JOHN MWANZA ISIKA ..... 2<sup>ND</sup> APPELLANT  
GABRIEL MURUGA MUGWIMI ..... 3<sup>RD</sup> APPELLANT  
RAPHAEL MUTEI MUTUNGI ..... 4<sup>TH</sup> APPELLANT  
JOSEPH KING'OO MUKUNZI ..... 5<sup>TH</sup> APPELLANT  
JOSHUA MUTETI NZAU ..... 6<sup>TH</sup> APPELLANT  
EUNICE NDUNGE KITHEKA ..... 7<sup>TH</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Conviction and sentence delivered on the 14th day of October 2021 in Kithimani Criminal Case No. 1090 of 2019 by Hon. Gilbert Shikwe, Principal Magistrate)*

**JUDGMENT**

1. The appellants were jointly charged with six offences. In count 1, they were charged with the offence of making false document without authority contrary to section 357 (a) of the *Penal Code*. The particulars of the charge were that on 10<sup>th</sup> day of March, 2019 at Mavoloni location, Yatta Sub County within Machakos County, with intent to defraud Mavoloni Company Limited, without lawful authority or excuse made minutes of board of directors purporting it to be genuine minutes of the board of directors of Mavoloni Company Limited.



2. In count 2, they were charged with the offence of making a document without authority contrary to section 357 (A) of the *Penal Code*. The particulars were that on 5<sup>th</sup> day of March, 2019 at Mavoloni location, Yatta Sub County within Machakos County, with intent to defraud Mavoloni Company Limited, without lawful authority or excuse made CR12 purporting it to be genuine certificate issued by registrar of companies, the fact they knew to be false.
3. In count 3, the Appellants were jointly charged with the offence of personation contrary to section 382(1) as read with section 36 of the *Penal Code*. The particulars were that on 5<sup>th</sup> day of March, 2019 at Mavoloni location, Yatta Sub County within Machakos County, with intent to defraud falsely represented themselves by listing themselves on the CR12 certificate to be board directors of Mavoloni Company Limited, a fact they knew to be false.
4. In count 4, the Appellants were jointly charged with the offence of personation contrary to section 382(1) as read with section 36 of the *Penal Code*. The particulars were that on 10<sup>th</sup> day of March, 2019 at Mavoloni location, Yatta Sub County within Machakos County, with intent to defraud falsely represented themselves by holding a meeting as be board of directors of Mavoloni Company Limited, a fact they knew to be false.
5. In count 5, the Appellants were jointly charged with the offence of personation contrary to Section 382(1) as read with section 36 of the *Penal Code*. The particulars were that on 28<sup>th</sup> day of May at Nairobi Milimani commercial Court within Nairobi County, with intent to defraud falsely represented themselves to the Registrar of the High Court Nairobi to be the Board members of Mavoloni Company Limited, a fact they knew to be false.
6. In count 6, the Appellants were jointly charged with the offence of conspiracy to defraud contrary to Section 317 of the *Penal Code*. The particulars were that on 10<sup>th</sup> day of March at Mavoloni location, Yatta Sub County within Machakos County, with intent to defraud appointed themselves to be board of directors of Mavoloni Company Limited, a fact they knew to be false.
7. At the trial seven (7) witnesses testified and the Appellants were found to have a case to answer. Upon being placed on their defence, they all elected to give sworn testimonies. After evaluating the evidence by both sides, the learned magistrate, in a judgment dated 14<sup>th</sup> October 2021 found the Appellants guilty on count 1 and acquitted them on counts 2,3,4 5 and 6 and sentenced them to suspended sentence of six months imprisonment.
8. Aggrieved by the conviction and sentence, the Appellants filed separate appeals seeking to have the conviction and sentence set aside on similar grounds to wit that;
  - a. The learned Trial Magistrate erred in law by holding that the company was known as Mavoloni Company Limited cannot hold its board meeting without the consent and approval of the security committee Yatta Sub County.
  - b. The learned Trial Magistrate erred in law by holding that that the appellants made minutes allegedly dated 10<sup>th</sup> March 2019 of an alleged meeting held on 12<sup>th</sup> February 2021 while in reality no meeting was held on 12<sup>th</sup> February 2019 by the Appellant.
  - c. The learned Trial Magistrate erred in law by holding and finding that the appellants (Accused) held a meeting on 10<sup>th</sup> March 2019 while no such meeting actually took place.”



9. The Appeals were later consolidated. Learned Counsel consented to canvass the appeal by way of written submissions. On his part the Appellant relied on the submissions dated 17<sup>th</sup> September, 2024. Counsel submitted that the trial magistrate contradicted himself on the issue of whether a meeting was held on 21<sup>st</sup> February 2019 or not. Relying on the case of South African Transport and Allied Worker union and another vs Garvas and others [2012] zacc, Boniface Mwangi vs Inspector General of Police & 5 others [2017] eKLR, Counsel submitted that the right to picket or assemble as long as the same is not marred with illegality cannot be construed to be admission to making a document without authority.
10. Counsel stated that the elements of the offence were not proved and that Section 70 of the Evidence Act requires that the signature or the handwriting alleged to be that of the person who signed the document must be proved. In support of this contention, reliance was placed on the case of Joseph Mureithi Kanyita vs R [2017] eKLR, Republic vs Baskerville (1916) 2 KB 658 at 667 and Pius Arap Maina vs Republic [2013] eKLR.
11. For the state/Respondent, it was submitted that the trial court was correct in relying on the testimony of PW3 since the sub county security committee halted the Appellants' notice to hold a meeting because of the Mavoloni Company dispute. That according to Section 276 of the Companies Act, only the Shareholders and Directors of a company can call a meeting and in this case the Appellants were not registered as shareholders or directors but had taken over running of the company by deceit and fraud. Further, that any meeting held after 12<sup>th</sup> February 2019 was illegal as the security committee had warned against it. Counsel contended that state had proved the offence beyond reasonable doubt. To support here submissions, Counsel placed reliance on the cases of Dennis Binyenya vs Republic [2018] eKLR and Joseph Mureithi Kanyita v Republic (supra).

### **Analysis and Determination**

12. As the first appellate court, I have carefully considered and evaluated the evidence adduced in the trial court so as to arrive at my own independent conclusion, albeit keeping in mind that unlike that court I did not see or hear the witnesses. I have also considered the submissions on record, the cases cited and the law.
13. The Appellants were found guilty of the offence of making a false document without authority contrary to section 357 (a) of the Penal Code which provides that;
  - “ Any person who, with intent to defraud or to deceive;
    - (a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing.....
14. The Respondent contended that on 10<sup>th</sup> March 2019 the Appellants with intent to defraud Mavoloni Company Limited, without lawful authority or excuse made minutes of the Board of Directors purporting it to be genuine minutes of the Board of Directors of Mavoloni Company Limited. The trial court stated as follows on page 24 of the Judgment:-
  - “ She clarified that when the first accused sent a notice for holding a meeting on 21/2/2019 the meeting was cancelled and no further meetings took place subsequently because they dispersed them. This therefore flies in the face of the particulars of facts contained in the fourth count which indicates that there was a meeting held on 10/3/2019. The prosecution owns witness disputes this.”



15. According to the Appellants, at no point did they send minutes to the Registrar of companies as alleged. The contention is confirmed by PW5's testimony as he does not make reference to any minutes. He was a clerical officer in the office of Business Registration. The investigating officer PW6 stated that from the letter contained (P. Exhibit 16 (b), the meeting was held on 10<sup>th</sup> March 2019; that P. Exhibit 7 (a) showed that they held a meeting. The Appellants in their defence deny that any meeting was held on the said 10<sup>th</sup> March 2019. The court has looked at the record and it appears that some of the exhibits especially that of the Respondent are not on the court file to enable this court look at the said exhibit 16 (b) and 7 (a). Nonetheless, there is strong evidence that no minutes were ever produced. Even the forensic examiner made no reference to any minutes. PW3 also confirmed that no other meetings were held after 14<sup>th</sup> February 2019 as those in attendant were dispersed. As such, the court finds that there was no sufficient evidence to sustain the allegation that the appellants made any minutes. The charge against them was therefore not proved beyond reasonable doubt and in the premises, the appeal succeeds and the conviction is quashed and the sentence set aside.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**E.N. MAINA**

**JUDGE**

In the presence of:

Ms Nyauncho for the state

Ms Nyaga for Okatch for the Appellants

All the Appellants save for the 7<sup>th</sup> Appellant

Miriam – Court assistant/Interpreter

