



REPUBLIC OF KENYA



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**Mwanzia v Republic (Criminal Appeal E092 of 2024)
[2025] KEHC 11334 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E092 OF 2024
RM MWONGO, J
JULY 30, 2025**

BETWEEN

JOHNAS MUTUA MWANZIA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal arising from the decision of Hon. R. Njoki Kabara in the Siakago
Magistrate's Court Criminal Case No. E748 of 2021 delivered on 31st October 2024)*

JUDGMENT

The Charges

1. The appellant and another were jointly charged with 5 counts as follows:
 - a. The 1st count was conspiracy to commit a felony contrary to section 393 of the *Penal Code*. Particulars of the 1st count were that on 01st February 2021 at Kiritiri land office in Mbeere South subcounty within Embu County, the appellant together with another, conspired to commit a felony namely making a false statement during land transfer.
 - b. The 2nd count was making a false statement contrary to section 103(1)(a) as read with section 103(1)(d) of the *Land Registration Act*. Particulars were that on 29th January 2021 during the land control board and on 01st February 2021 during transfer of land parcel number Mbeere/Wachoro/1355 as Kiritiri Land office in Mbeere South subcounty within Embu County, the appellant together with another, made a false statement in writing with the disposition and transfer affecting land Mbeere/Wachoro/1355 registered under the names of the late Ngumbuku Njagi.
 - c. The 3rd count was impersonation contrary to section 382(1) of the *Penal Code*. Particulars were that on 29th January 2021 during the Land Control Board Meeting and on 01st February



2021 during transfer of land parcel number Mbeere/Wachoro/1355 as Kiritiri Land office in Mbeere South subcounty within Embu County, the appellant, with intention to defraud, falsely represented himself to be the late Ngumbuku Njagi the registered proprietor of land parcel number Mbeere/Wachoro/1355.

- d. The 4th count was making a false document contrary to section 347(d)(iv) as read with section 348 of the *Penal Code*. Particulars are that with the intent to defraud and without lawful excuse, the appellant made a land transfer form and signed it in the name of the late Ngumbuku Njagi the registered proprietor of land parcel number Mbeere/Wachoro/1355.
 - e. The 5th count was procuring execution of a document by false pretences contrary to section 355 of the *Penal Code*. Particulars are that on 01st February 2021 at Kiritiri Land office in Mbeere South subcounty within Embu County, by means of false and fraudulent representation as to the transfer of land document, the appellant procured land registrar Mbeere South subcounty to sign the transfer document and issue Purity Njambi Muriithi with the title deed in respect of land parcel number Mbeere/Wachoro/1355.
2. He pleaded not guilty to all the charges and the matter went to full hearing. He was convicted of the 2nd, 3rd and 4th counts. He was sentenced to 3 years imprisonment for each of the counts he was convicted of.

Petition of Appeal

3. Dissatisfied, the appellant filed a petition of appeal dated 08th November 2024 seeking that the convictions and sentences be set aside and he be set at liberty. The grounds of appeal are that:
1. The Learned trial Magistrate erred in law and fact by holding that, the Prosecution had proved a case against the Appellant herein and which finding was contrary to the weight of evidence adduced before the Honourable court;
 2. The trial Magistrate erred in law and fact by holding that the prosecution had proved a case of making false statement in writing contrary to section 103(1)(a) as read with section 103(1)(d) of *Land Registration Act* which finding was contrary to the weight of evidence adduced before the Honourable court;
 3. That trial Magistrate erred in law and fact by not finding that none of the witnesses particularly PW1 and PW2 saw and identified the Appellant during the land control board;
 4. The trial Magistrate erred in law and fact by holding that, the prosecution had proved a case of personation contrary to section 382(1) of the *Penal Code* which finding was contrary to the weight of evidence adduced before the Honourable court;
 5. That trial Magistrate erred in law and fact by not finding that the passport photo of the Appellant used in the application for consent of the Land Control Board were wrongly used by other individual for that purpose;
 6. The trial Magistrate erred in law and tact by holding that, the prosecution had proved a case of making false document contrary to section 347(d)(iv) as read with section 348 of the *Penal Code* which finding was contrary to the weight of evidence adduced before the Honourable court;
 7. That trial Magistrate erred in law and fact by not appreciating the Appellant's defence and finding that his evidence was well corroborated by that of his co-accused; and



8. The trial Magistrate erred in law and fact by convicting the Appellant as charged and passed a custodial sentence without a fine which sentence was harsh and excessive under the circumstances and in any event, there was no sufficient evidence to prove the charges preferred against the Appellant herein.

Summary of the Evidence in the trial Court

4. PW1 was Roseline Muthoni Nyaga who stated that she was a member of the Mbeere South Land Control Board at the time of the incident. She stated that she and other Board members sat with the DCC on 29th January 2021. In May 2021, she was called by the police regarding one of the properties that the board had signed off on. It was her evidence that the attendees under entry number 260 had not attended the Land Control Board on that day but consents were signed to transfer the land. She denied seeing the land owner or the purchaser of the subject parcel of land on that day. She also denied seeing the appellant that day.
5. PW2 was Margaret Muthoni Mutai, the Principal Land Registrar at Kiritiri Land Registry. She produced documents relating to land parcel number Mbeere/ Wachoro/1355 that were used to transfer the subject land. She stated that after the transaction happened, the DCI told her that the owner of the land was deceased and she was shown a death certificate. She therefore placed a restriction on the land to avoid further dealings in it and cancelled the transfer of the land to one Purity since the entry appeared to have been done fraudulently. She stated that the role of the registrar was to verify that all the documents were presented and in order before signing and that is what happened that time. She did not see the buyer of the property. She produced Prosecution Exhibits 2 – 15.
6. PW3 was Rose Syotwili Mutisya who stated that she lived on the subject land which belonged to the late Ngumbuku Njagi who is buried thereon. She stated that when she got married to her late husband, she found him living on the late Ngumbuku Njagi's land. She did not know the alleged purchaser of the land.
7. PW4 Josphat Warui, Assistant Chief of Wachoro Sub-location up to June 2020. He stated that the late Ngumbuku Njagi lived on the subject land alone since he did not have any known relatives. After the death of the late Ngumbuku Njagi, PW3 and her family continued living on the said land but there were disagreements between PW3 and the appellant's mother. He advised them to subdivide the land between themselves.
8. PW5 was Ann Ndinge Kiunde, a cousin to the appellant. She stated that the late Ngumbuku Njagi was the owner of the subject land. They found out that the land had been transferred to Purity Njambi Muriithi who is an alleged daughter of the deceased. Since PW5's mother lived on the land, someone called Theuri approached her and asked her to leave the land and move to another property and be paid Kshs.50,000/= . The Assistant Chief told her mother to leave because Theuri was the owner of the land which is 10 acres. According to her, the late Ngumbuku Njagi did not have any known family. They went to the DCI and reported the illegal transfer. They learned that the appellant was one of the people who transferred the land to Purity Njambi whose husband is called Theuri.
9. PW6 was Priscilla Nduku aunt to the accused. She stated that the late Ngumbuku Njagi was living with PW3 and her family on his land. He had no children and when he died, he was buried on that land.
10. PW7 was Inspector Eli John Mwangi, a forensic document examiner attached to DCI. He stated that he examined the Land Control Board consent forms and handwriting specimens for PW1. He concluded that the signature of PW1 is not the same as the one appended on the Land Control Board



consent forms. That the handwritings were made by different authors. PW1 did not write and sign the documents in question.

11. Sgt. Paul Seda of DCI testified as PW8. He stated that the matter was reported at his office by PW3 and her daughters. He obtained copies of the transfer instruments used at the Lands Office. He also visited the land where he found the appellant and his co-accused. The documents showed that the appellant had presented himself at the Lands Office alleging to be the owner of the land, yet the actual proprietor had died in 1986. The Land Registrar had, at this point, cancelled the transfer entry after learning that it was fraudulent. The deceased proprietor's national ID had been used fraudulently and the KRA PIN was fake.
12. He examined the land register and discovered that the land belonged to the late Ngumbuku Njagi. The appellant was arrested and charged with the offences following the outcome of the investigations. In cross-examination, he stated that he discovered discrepancies on the title document that was transferred to Purity Njambi since it lacked some details that should be on a proper title deed. He disclosed that Purity Njambi was arrested but was never arraigned on instruction of the CCIO at the time. She was released on bail and he has never seen her again because he was transferred to another work station.
13. In his defence, DW1, the appellant, stated that when the late Ngumbuku Njagi died, James Theuri come to do succession over the land. He gave his particulars to James Theuri and he did not know whether that gentleman was related to Purity Njambi. He stated that he gave James Theuri copies of his ID, KRA PIN and passport photo. He denied knowledge of the sale agreement and stated that he was not involved in transferring any land. He also denied signing the documents relating to transfer of the land.
14. In cross-examination, he stated that James Theuri knew his mother but he did not know how they related. He was introduced to Theuri and then he gave him his documents knowing that they were for purposes of succession proceedings. According to him, the late Ngumbuku Njagi left the subject to his mother but he could not prove this. He stated that the alleged agreement was written in 1984 when he was only 12 years old.
15. DW2 was Nicholas Njuguna Mwanzia, the appellant's co-accused and younger brother. He testified that James Theuri collected his documents claiming that they were needed for succession proceedings and he gave his ID. DW1 also gave away his documents. He did not know whether DW1 attended the Land Control Board. He stated that the alleged agreement to sell the land was written at a time when he was very young. He did not know Purity Njambi or Theuri but he gave his ID to Theuri in 2021 and did not know him before then.

Parties' Submissions

16. The parties to the appeal were directed to file their written submissions and they both complied.
17. The appellant relied on the case of *Okeno v Republic* [1972] EA 32 and urged the court to reevaluate the evidence adduced before the trial court. He argued that the trial court failed to pay attention to the fact that the appellant gave his documents to one Theuri who could have used them to commit the offences. That the testimony of PW7 shows that Purity was involved in this fraudulent activity but she was never arraigned even though she was arrested. That the fact that Purity Njambi was not called as a witness as one of the signatories of the transfer proves that the case was not proved beyond reasonable doubt. He urged the court to allow the appeal.
18. The respondent submitted that the prosecution proved all the elements of each count beyond reasonable doubt and that the convictions were safe. It relied on section 103(1)(a) as read with section



103(1)(d) of [Land Registration Act](#) and sections 332 and 347(1)(iv) of the [Penal Code](#) and stated that the defense of the appellant was considered but it did not displace the prosecution's case. It urged the court to dismiss the appeal.

Issues for Determination

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

Analysis and Determination

20. This court is well aware of its obligations as a first appellate court and it endeavors to review the evidence at trial and reach its own conclusion. In the case of *Okeno v Republic (supra)* I agree with the court when it held:

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

21. As already stated, the appellant was convicted on counts 2, 3 and 4 in the Charge sheet. These are the convictions impugned by the appellant, and which are subjected herein to analysis of this appeal.
22. In the case of the 2nd count, the charge alleged that the appellant made a false statement which led to the transfer of land parcel number Mbeere/Wachoro/1355. Section 103(1)(a) and (d) of the [Land Registration Act](#) provide as follows:

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

23. It is paramount that for this offence to stand, the accused person must have made the false statement knowingly and that the statement ought to have been intended to conceal the truth from the Registrar. Part of the transaction to transfer the land is that a Land Control Board consent has to be obtained by the parties intending to transact. On the day when such consent was scheduled to be issued, it appears that the seller was supposed to attend the Land Control Board sitting but he did not.
24. PW1 stated that she was working with the Land Control Board at the time of the incident but she did not see the appellant that day. She also stated that the signature on the consent did not belong to her



- and her testimony was corroborated by that of PW7, a handwriting expert. She confirmed the none of the parties to the transaction attended the land control board sitting. PW5 testified that her mother lives on the land which belongs to the late Ngumbuku Njagi. She also testified that her mother was about to be evicted because they learned that the land had been transferred to one Purity Njambi who was the wife of Theuri.
25. DW1 and DW2 testified that a man called Theuri took their personal details and told them that he wanted to initiate succession proceedings in the estate of the late Ngumbuku Njagi. They said that Theuri is known to their mother and so they gave the documents knowing that their mother knew the person well. DW1 gave Theuri his ID, KRA PIN and passport photograph, which documents, he stated, were used to transfer the title document.
 26. There is doubt arising regarding the appellant's involvement in the transfer of the property. It appears that documents were falsified/forged and the same were presented before the Land Registrar. The prosecution did not explain why the actual named buyer of the property was not called as a witness, or why she was not prosecuted with the offence since she, too, signed the documents. More doubt arises from the testimony of PW8 who stated that the purported buyer of the land was arrested but before she was arraigned, the CCIO instructed that she be released on bail of Kshs.100,000/= . After this, she was never arraigned PW8 Sgt Seda said he never saw her again. He testified that when he tried to follow up on arraignment of Purity Njambi, he was punitively transferred to another work station.
 27. The standard of proof in a criminal case is very high; beyond reasonable doubt. According to Duhaime's *Criminal Law Dictionary*, reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in such a condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge. Here, the aforementioned issues raise reasonable doubt as to the appellant's involvement in the charges under Section 103(1)(a) and (d) of the [Land Registration Act](#).
 28. On this issue, I am not satisfied that the count was proved beyond reasonable doubt.
 29. The appellant was also convicted, in count 3, of impersonation under section 382(1) of the [Penal Code](#) which provides:

“ Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.”
 30. For this offence to be established, it must be proved beyond reasonable doubt that the accused person falsely represented himself to be another person with the intent to commit fraud. From the evidence, it is clear that the appellant and his brother knew the late Ngumbuku Njagi on whose land their mother lived for a while. PW5 stated that they learned that the land had been transferred to Purity Njambi who was not known to them. According to the prosecution, the appellant's documents were used to do this transfer yet they were found to be fake documents which misled the Land Registrar into completing the transfer.
 31. PW1 the Land Control Board member, stated that she did not see the appellant on the day when Land Control Board consent should have been obtained. In fact, none of the parties attended the board sitting but a consent was issued (which consent was a fake document). PW2, the Land Registrar, stated that she finalized the transfer after verifying that all the relevant documents had been presented before her. It was not clear who presented the documents of the Registry.
 32. While it is may be true that the appellant's personal identification documents were used for the transfer of the title, this position is disproved through the appellant's defense. He is said to have given his



documents to Theuri who was working with Purity Njambi, the transferee. PW5 and PW8 mention Theuri as the person who was pulling the strings towards obtaining the land for Purity Njambi.

33. The evidence here is also dubious since none of the land officials saw the appellant misrepresenting himself as the deceased proprietor of the land even though his documents were used in the transactions. The appellant gave his personal identification documents to the said Theuri. Without more, it should be taken that someone - such as Theuri - also impersonated PW1 and issued the fake consent that was used to transfer the title. It is not very clear who that impersonator is, and it is not upon the Appellant to prove who it was, or for court to speculate. This reasonable doubt is fueled by the fact that Theuri and Purity Njambi were adversely mentioned but the prosecution did not bring them into the case to explain their involvement in the transfer of the title.
34. On count 3 also, I am unable to ascertain that there was proof beyond reasonable doubt to warrant the appellant's conviction.
35. Finally, the appellant was convicted of the offence under section 347(d)(iv) and 348 of the *Penal Code* as follows:

“Any person makes a false document who signs a document in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be;

348: An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.”

36. The prosecution stated that the appellant prepared the land transfer forms in the name of the late Ngumbuku Njagi as the transferor, and intended to use the said forms to transfer that land. Part of the evidence is a transfer form dated 06th January 2021 which was used to transfer the land. The transferor is named as the late Ngumbuku Njagi while the transferee is Purity Njambi. There is also a sale agreement dated 05th January 2010 between Purity Njambi and the appellant and his brother DW2. The dates on these documents do not make any sense because the deceased died in April 2007. No explanation is given for the discrepancy between 2007 and 2010.
37. There are more questions and gaps arising from the evidence adduced. These questions and gaps raise doubt as to whether the appellant was even properly charged with the offences. There can be no doubt whatsoever that the transfer instrument was falsified because the transferor was long dead before the date when it was drawn. There is also the fact that the person intended to acquire an interest in the property was not questioned and arraigned. After all, it takes two to tango, but this was not the case here.
38. As stated hereinbefore, there is more than reasonable doubt as to the appellant's culpability in the offences. His defense weakened the prosecution's case.

Disposition

39. Given my findings above on each of the three (3) counts on which the appellant was convicted, I am satisfied that the convictions were done despite reasonable doubt.



40. The appeal must succeed. There are more questions than answers raised by the evidence, and the standard of proof has not been attained.
41. Accordingly, the convictions by the trial court are quashed and set aside. The appellant shall be set at liberty unless otherwise lawfully held.
42. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF JULY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Appellant Present in Court

Ms. Nyika for the Respondent

G. Kahiga for Appellant

Francis Munyao - Court Assistant

