



**Kariuki v Republic (Criminal Appeal 8 of 2020)  
[2025] KEHC 12408 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL 8 OF 2020  
EM MURIITHI, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**ROSE GATURI KARIUKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon.  
M. Nasimiyu SRM in Gichugu Cr. No. 595 of 2015 on 30/6/2017)*

**JUDGMENT**

1. Rose Gaturi Kariuki, the appellant herein faced a principal charge of obtaining money by false pretences contrary to Section 313 of the Penal Code, with particulars were that on diverse dates between 10/4/2014 and 22/8/2014, with intent to defraud, she obtained Ksh. One Million from Francis Njoroge Maina by falsely pretending that she was in a position to sell him land No. Gichugu/ settlement Scheme/688 a fact she knew to be false.
2. She faced other related offences in 7 counts as follows:
  - a. A second count of making a false document contrary to Section 347(a) of the Penal Code. The particulars were that on unknown dates between the month of January 2014 and April 2014 at unknown place within Kirinyaga County, with intent to defraud, she made a false document namely a title deed No. Gichugu Settlement Scheme/1364 purporting it to be a genuine title deed issued by Land Registrar Kerugoya.
  - b. A third count of making a false document contrary to Section 347(a) of the Penal Code. The particulars were that on unknown dates between the month of January 2014 and April 2014 at unknown place within Kirinyaga County, with intent to defraud, she made a false document namely a title deed No. Gichugu Settlement Scheme/1365 purporting it to be a genuine title deed issued by Land Registrar Kerugoya.



- c. A fourth count of making a false document contrary to Section 347(a) of the Penal Code. The particulars were that on unknown dates between the month of January 2014 and April 2014 at unknown place within Kirinyaga County, with intent to defraud, she made a false document namely National Identity Card No. xxxxxx Serial No. xxxxxx purporting it to be a genuine Identity Card issued to Felister Wanjira Kingori by the Registrar of Persons.
  - d. A fifth count of uttering a false document contrary to Section 353 of the Penal Code. The particulars were that on 22/8/2014 at Kutus Trading Center within Kirinyaga County, she knowingly and fraudulently uttered a false document namely a title deed No. Gichugu/Settlement Scheme/1364 to Francis Njoroge Maina.
  - e. A sixth count of uttering a false document contrary to Section 353 of the Penal Code. The particulars were that on 22/8/2014 at Kutus Trading Center within Kirinyaga County, she knowingly and fraudulently uttered a false document namely a title deed No. Gichugu/Settlement Scheme/1365 to Francis Njoroge Maina.
  - f. A seventh count of forgery contrary to Section 349 of the Penal Code. The particulars were that on 30/5/2014 at unknown place within Kirinyaga County, with intent to defraud, she forged a certain document namely certificate of official search purporting it to have been made and signed by the Land Registrar Kerugoya.
  - g. An eighth count of personation contrary to Section 382 of the Penal Code. The particulars were that on 10/4/2014 at Ngurubani Trading Center within Kirinyaga County, with intent to defraud, she represented herself as Felister Wanjira Kingori a fact she knew to be false.
3. She denied the charges but upon full trial, she was convicted and sentenced “in respect of counts I, II and III, I sentence each accused to serve three (3) years imprisonment. In respect of count V, VI and VIII, the second accused is sentenced to serve 3 years imprisonment. Each accused is sentenced to serve 3 years imprisonment in count VIII. The second accused shall also serve 5 years imprisonment in count X.”

The result is that the appellant would serve an aggregate of 26 years imprisonment for the consecutive service of the sentences under the various offences.

### **The Appeal**

4. On appeal, the appellant raised 4 grounds of appeal as follows:
- a. The Hon. Trial magistrate erred in law and fact by failing to consider that prosecution evidence lacked merit to support the alleged crime commissions.
  - b. The trial magistrate erred in law and fact by failing to consider that NO exhibit was found in position of the appellant.
  - c. The Hon trial magistrate erred in law and fact by not giving regard to the cogent defense case.
  - d. The Hon trial magistrate erred in law and fact by meting out a sentence that was both harsh and excessive in circumstances.

### **Duty of Appellant Court**

5. The duty of this court as the first appellate court is to re-evaluate the evidence on record and draw its own independent conclusions, bearing in mind that it neither saw nor heard the witnesses and should make due allowance in that respect. (See *Okeno v R* (1972) EA 32).



## Evidence

6. PW1 Chief Inspector Geoffrey Ghania produced the 1<sup>st</sup> report dated 23/12/2014, the exhibit memo, the 2<sup>nd</sup> report dated 19/2/2015, the 3<sup>rd</sup> report dated 19/2/2015, report dated 3/11/2014 and the exhibit memo as exhibits. He testified that, "I am of CID headquarter Nairobi and a forensic document examiner for which I was duly trained at CID Headquarter and National Ribal University Khartoum Ethiopia. My work entails examination of signatures currency etc. On the 5/12/2014, the following documents were forwarded to me for examination namely A1 - A3. This is a sale agreement dated 10/4/2014 between Felista Wanjira King'ori (vendor) and Francis Njoroge Maina (purchaser) agreement dated 10/4/2014 - MFI-1. B1-B4 - this is a sale agreement dated 2/5/2014 between Felista Wanjira King'ori (vendor) and Maureen Wanja (Purchaser) agreement dated 2/5/2014 - MFI - 2. C - is a handwritten agreement dated 22/8/2014 between Felista Wanja King'ori and Francis Maina Njoroge. Sale agreement dated 22/8/2014 - MFI -3. All these documents were indicated as questioned documents. Documents D1 - D2 contained specimen signatures of Francis Gachoki Kamau D1 - D2 - MFI - 4 document marked E -contained Kamau's signatures for Francis Gachoki. E - MFI 5. F1 - F2 -MFI - 6. The documents were accompanied by an exhibit memo. Exhibit memo-MFI-7. The documents were escorted to our office by sergeant Wanjiru from CID office Wang'uru. We were supposed to ascertain whether the signature pointed by red pen on document marked A3, D4 and C were made by the same author when compared with specimen signatures, marked D1- D2 (MFI - 4) and the known signature on the document marked E (MFI-5) on examination. I concluded that the signatures were made by different people that is Francis Gachoki Kamau did not sign the agreed documents i.e A3, B4 and C. Request number two was to ascertain whether the hand writing marked by pencil on the document marked B2 (MFI 2) and C (MFI 3) was made by the same author when compared with specimen handwriting on the document marked F1- F2 (MFI - 6). On examination, I found that the handwriting was made by the same person. That is to say Peter Gichobi did write on the area ruled by pencil on B2 (MFI - 2) and C (MFI - 3). On the 19/2/2015 the following documents were forwarded for examination that is document A1 - A3 (MFI - 1) B1 - B4 (MFI - 2) and C (MFI - 3) which were questioned and document marked Q containing specimen handwriting of Felista Wanjira King'ori. Specimen handwriting for Felista - MFI 8. The documents were accompanied by an exhibit memo dated 19/2/2015. Exhibit memo dated 17/2/2015 (MFI 9) I was to ascertain whether the handwriting signature marked by red pen on the document marked B2 (MFI 2), B3 (MFI - 2) and C (MFI - 3) was made by the same author when compared with specimen handwriting on document marked (MFI - 8). On examination I formed an opinion that the signatures were made by the same person that is Felista did sign documents - B1, B2, B3 and C. On the same date 19/2/2015 further documents were handed in marked as follows; B-C letter of consent from District Commissioner Mwea. The letter is dated 14/5/2015 - MFI-9. This document (B) was granted. The other document is marked C bearing stamp impressions of Mr. Towett Chairman Land Control Board Mwea East. Stamp impression - MFI-10 these were accompanied by a memo from dated 19/2/2015. MFI-11. I was requested to ascertain whether the signatures printed by red pen on the document marked B/ (MFI-9) was made by the same author when compared with specimen signature on the document marked CI (MFI-10). On examination I opinioned that the signatures were made by different authors. That is to say the chairman of the Land Control Board Mwea East did not sign the letter of consent. Secondly, I was to ascertain whether the stamp impressions pointed by lack arrow on MFI-9 was made by the same instrument when compared with specimen stamp impression of the document marked CI - MFI-10. I opinioned upon examination that the stamp impressions were made by different instruments. That is to say MFI-10 was not stamped at the office of chairman Land Control Board Mwea. I considered several factors. My examination as detailed in my reports. There were also other instruments forwarded for examination by my colleague one Chief Inspector Alex Mwongera with



whom I have worked for 7 years since we joined the department. I am conversant with signatures, writing for I have observed him write and sign. Even before we joined the department we used to work together at the General Service Unit (GSU). Today I was attending another case before Milimani High Court and could not attend. On the 24/10/2014 the following documents were forwarded to our office and were marked as H, I, J and L being ground documents. H - was a copy of title deed no. Gichugu/Settlement Scheme/1365 in the name of Maureen Wanja Njoroge ID no xxxxxx. Title deed Gichugu Settlement Scheme/1365 - MFI-15. I, was a certificate of official search for 1364 Gichugu/Settlement Scheme/1365 dated 30/5/2014. Official search 30/5/2014 - MFI-16. J was a title deed for Gichugu settlement scheme/1364 in the name of Francis Maina Njoroge ID no xxxxxx dated 30/5/2014. Title deed no 1364 - MFI-17. L - certificate of official search for title number Gichugu/settlement scheme/1365 dated 30/5/2014. Official search 30/5/2014 for 1365-MFI-18. M1-M3 these were specimen signatures and stamp impressions of land registrar one Cyrus Muthike Kironje. Specimen signature for Muthike - MFI 19. Accompanying the documents was an exhibit memo dated 24/10/2014-MFI 20. The documents were forwarded by Inspector Mercy Makau. The request was to ascertain whether the signature pointed by red arrows on the signed document (A), (J), (I) and (Z) were made by the same author when compared with specimen documents marked M1-M3. On examination, it was opined the documents were not made by the same author. That is to say the land registrar did not sign the said documents (MFI-15-18). The 2<sup>nd</sup> request was to ascertain whether the stamp impressions on H, I, J and L were made by the same instruments when compared with the impressions on MFI-19. On examination, there was no agreement between the stamp impressions and such the same were made by different instruments. That is to say stamps appearing on MFI - 15-18 did not originate from the land registrar's office. Several factors were considered as enumerated in my report (witness read to the factors). The examination was done on 3/11/2014 and a report issued duly signed by my colleagues Alex Mwangera. I wish to confirm that all the documents which I have allowed to are before the court. The accused persons are unknown to me."

7. On cross examination, he stated that, "I don't know you. I have seen you for the first time today."
8. PW2 Cyrus Muthike Kironji testified that, "I used to work with the Ministry of Lands which I left in February 2015. I was working as Lands Registrar. On 20/10/2014 a police officer came to my office with two title deeds and two official searches. She wanted to know whether the said documents had originated from my office and if I am the one who had signed them. I perused them and discovered the documents were not signed by me. The details appearing on the title deed did not correspond with our records. I have a green card for title no's 1365 (MFI 15 and 1364 (MFI-15). I found the title deeds to be fake. With title no. 1364 the approximate area of the land is 1.63 Hectares whereas the green card reads 3.65 hectares. The registry map sheet number on the title is no. 13 instead of sheet no. 11. The subdivision which created this number is read to be no. 688 while the green card indicates subdivision of 315. The registered owner is indicated as Francis Maina Njoroge whereas according to the green card the owner is Njeri Chomba Muthigani. The date of registration on the title is reflected entry 30/5/2014 whereas the entry on the green card is entry no. 1 dated 2/7/1991. The other issue of concern is that the entry is entered no. 3 of 20/5/2015 whereas on the green card the entry is no. 2 dated 6/1/1994. The green card dated 15/10/2014 for 1364 - MFI-22 and produced as P. Exh 22 with 1365 in the title the hectare is indicated 0.80 hectares while on the green card indicates 24 hectares. On the sheet number its indicated no. 12 whereas according to the green card its no. 11. The title rates of a subdivision no. 688 whereas the green card talks of 315. The owner according to the title is Maureen Wanja Njoroge whereas the green cards reads Chomba Njeru. The entry number on the title is entry no. 2 dated 30/5/2014 whereas according to the green card is no. 2 dated 10/1/1994. The title is alleged to have been issued as entry no. 3 of 30/5/2014 whereas on records shows the entry was no. 3 of 10/1/1994. Green card for 1365 - MFI-23 and produced as P. Exh. 23. I also wish to produce



- MFI-15 and MFI-16. MFI-15 and MFI-16 produced as P.Exh. 15 and 16 respectively. Accused persons were unknown to me.”
9. On cross examination, he stated that, “I don’t know you. The investigating officer did not tell me whence she obtained the documents he brought to me. It’s the court to decide whether or not you were aware of the said documents.”
  10. PW3 Francis Gachoki Kamau testified that, “I recall last year 2014. I was summoned by one of the CID officers at Mwea on the allegations that I had witnessed a sale of land agreement. I came to the DCIO’s office Mwea and told the officer that I had never witnessed any sale of land agreement. I recorded a statement in that behalf. Recently I was informed of today’s hearing date. My National Identity Card no. xxxxxx. I was born in 1965 at Gichugu, Baragwe. The ID card was issued on 16/7/2013. My home district is Kirinyaga, Gichugu division, Baragwe location. At the back of the ID is no. Txxxxxx. The passport appearing on my ID is mine. Reference to document - this document is a photocopy of an ID. The copy bears my name. ID No. xxxxxxxx which tallies with mine. The S/No xxxxxxxx also corresponds with mine. Date of birth is the same. The date of issue on the copy is 10/7/2013 whereas on mine the date is 16/7/2013. On the back the copy bears no. Txxxxxx whereas mine is Txxxxxx. I wish to produce my original ID card as exhibit in this case. Original ID for Francis MFI-24. Copy of ID (allegedly fake) MFI-15. These photos appearing on the two are different. I understand my name has been used without my knowledge in many other transactions with cases pending before court. It’s the 1<sup>st</sup> accused in this case who is alleged to have impersonated me. He was unknown to me.”
  11. On cross examination, he stated that, “I don’t know. I have seen you for the first trial court.”
  12. PW4 Francis Njoroge Maina testified that, “I work in Ruiru. I am an electrician. In December 2013, one Karuru apprehended me and offered to look for a land for me to buy. Thereafter he called and told me he had found land at Difathas. I and Muchiri my friend went to the site where we found Karuru with two other girls. The land was good and Karuru to us the price later of 300,000 per acres. The farm was about 6.3 hectares which is about 9 acres. I offered to buy 2 acres. I asked Karuru for the ownership documents. He told me he would ask the owner to provide the documents. In April 2014, I and Karuru went to the land’s office for a search. According to the search the owner was Felister Wanjira. We arranged to meet Felista 10/4/2014. Karuru gave me the phone contacts of the said Felista Wanjira King’ori. Sorry, I was given phone contacts for Francis being 0707 xxxxxx who was said to be husband to Felista. Its Karuru who told me so. He convinced me if the husband agrees, Felista would sell. On 10/4/2014, I met with Felista at Equity Bank Mwea. I was accompanied by friend one Muchiri. We arrived very early. We just went to an advocate’s office by the same Chris Maina. He agreed to draw the would-be agreement. Francis and the said Felista arrived thereafter. We told them we had an advocate. Francis appeared surprised by the proposal and asked if we knew advocates from Mwea very well. He instead proposed to do the agreement at the office of one Bwonwonga at Kerugoya. By the time we got at the advocates office we had settled the sale agreements. The purchase price was Kshs 475,000 for 3 acres. I paid a down payment of Kshs 200,000 at the advocates office. The transaction was witnessed by Francis. Reference to MFI-1. This is the sale agreement dated 10/4/2014. Sorry the entire size of the whole farm was 2.6 hectares which is about 6 acres. Thereafter Francis insisted that I send him money through phone (Mpesa) because the land was his. I would also send the money to Felista via phone. Every time I speak to either of them the recipient would confirm that the other was concurrence. Later I came to the farm with my daughter mama Wanja. She was also interested in buying a portion thereof. On 22/5/2014 I and Maureen went to Bwonwonga’s office. The seller Felister came and sold 30 acres at Kshs 310,000 as per the agreement marked MFI-2. On 1/6/2014, I took Kshs 110,000 to Francis, being the balance of the purchase price in respect of Maureen’s land. Maureen demanded for title deed for her portion which she had paid for in full. Francis told her to



wait for me to complete payment for my portion so that we can deal at once on 22/8/2014, I paid the final installment to Francis and Felista at kiburi chicken place. I gave 70,000 to Felista and 80,000 to Francis. Upon that payment I was given two original title deeds namely 1364 and 1365 (MFI-1 and MFI-2) in the same day I went to conduct a search at lands office. I found that land no. 1364 which had been sold to me di one Chomba. I reported the matter at Kianyaga. The search I conducted on 21/8/2014 is before court which I marked as MFI-26 and I wish to produce. The police at Kianyaga referred me to Wang'uru police station. In April 2014, I had conducted a search which showed that land was Felistus. I wish to produce the same. Search undated-MFI-27 I used to send money to Felista and her husband interchangeably. I have Mpesa accounts showing the remittances. In total I and my daughter paid to Felista and Francis substituted amount of money but was less than a million. When I came back to the police station at one time I found the said Francis we exchanged greetings as usual. Soon thereafter Felista was also arrested. At one time, Francis whispered to me that he would refund me my money but he did not fulfill his promise despite my insistence. The accused persons were unknown to me before we met.”

13. On cross examination, he stated that, “You and Francis once took me to the farm land and showed me these boundaries. The said Francis was introduced to me as your husband. We had discussed the issue with Francis before I met you.”
14. In re-examination, he stated that, “The accused person gave me copies of their ID cards and PIN certificates. 1364 and 1365 ought to be subdivisions of 688 shown in the sale agreements. The down payment was given by Felista by myself at the office of bwonwanga. Karuru never received any part of the purchase price.”
15. PW5 Samuel Maritim Towett testified that, “I am Senior Deputy County Assistant Commissioner Mwea East. I deputize the County Commissioner in several forums including the Land Control Board meetings. Reference to document - (Exh. 9) - These are minutes/agenda for Land Control Board of 8/5/2024 in which I was a co-chair sitting on behalf of the substantive chair county commissioner. Agenda no. 282 regards a matter before this court Kiine/Rukanga/4109. The issue before us was transfer of this property to Stephen Karani and Peter Kinyua Gakwachi from Gakeci Karani. The minute did not concern Felista Wanjiru at all as alleged in the consent (P.Exh. 10) dated 14/5/2014. The consent is not genuine on its face. The signatures do not belong to any of the co-chairs and so are the writings thereon. The handwriting does not belong to any of our staff. Part B (1 & 2) indicates the land belonged to Felista but doesn't indicate to whom it was being transferred in part A of the consent, the parcel number is Gichugu/Settlement/288 in Mwea yet Gichugu is in Murinduko. Locality should represent the location of the property. The amount of the money involved is also not discussed. The stamp used doesn't belong to the Deputy County Commissioner but what has been used is a stamp for the D.C which we stopped using in 2012. Even then our stamp had smaller/thinner ink impressions. Reference to P.Exh. 10 - This is my correct signature. Reference to P.O - This is not my signature. In totality the consent is faulty and so on the entries. The consent did not originate from our office. There's a register into which we enter all the application and their details but we do not have record of the subject matter herein in our office. None of the accused persons is known to me.”
16. On cross examination, he stated that, “I have never seen you at my office. According to our records you never made any application for the consent.”
17. In re-examination, he stated that, “The statement I recorded for this case is dated 5/12/2014 and was recorded at 9 am. In page 2 I have referred to minute 282 of May 2014. This statement in page 2 corresponds with the one in the police file which you have read to me.”



18. PW6 Corporal Daniel Hamisi produced the letter dated 19/6/2015, Misc. Application No. the statement for account 0707xxxxxx, the statement for account 0708xxxx and the certificate dated 19/6/2015 as exhibits. He testified that, “I am attached in Safaricom law agreement liaison office Safaricom headquarters. My duties involve processing of Mpesa records upon issue of warrant by court of law in that behalf. In respect to this case I have been issued with cultivating order 19/6/2015 informing the court that I have been authorized to appear as a technical expert duly signed by the head of our department. On 10/6/2015, the legal office received summons to appear in this case. I was informed of the summons and I took the necessary action. On 2/2/2015 the order had been issued by this court requiring details in respect of two accounts namely No 0xxxxxx and 0707xxxx. The officer involved one IP Mercy Makau had indicated she was investigating a case of obtaining by false pretenses and she required assistance. On 19/6/2015 I extracted the required data showing registration details and Mpesa statements. 0708xxxx is registered to ID No xxxxxx Felista Wanjira King'ori. The Mpesa statement covers 30/3/2014-22/8/2014. The investigations highlighted these transactions between Felista and Francis Njoroge Maina of 0722xxxx. Of note is that in all the transactions Francis is sending money to Felista Wanjira King'ori. The 2<sup>nd</sup> report in respect of 0707xxxxxx is registered to ID xxxxx Francis Gachohi Kamau. The Statement for the account ranges from 30/5/2014-22/10/2014. The highlighted transactions are between 0722xxxxxx of Francis Njoroge Maina who sent money to the account of Francis Kamau. I have also prepared a certificate to confirm that the documents produced have in respect of the said accounts are true computer printouts as per law required. The certificate name DTSFH04E015. The certificate is dated 19/6/2015 and duly signed and endorsed. None of the accused persons is known to me.”
19. On cross examination, he stated that, “There's a process followed in opening an Mpesa account. A form is filled and supporting documents submitted e.g. national ID card or passport. The statements I have produced do not show the purpose for which the money was meant.”
20. PW7 James Muchiri Michuki testified that, “I recall in March 2014 on a date I can't recall Maina my friend (complainant) told me he had found land in Kirinyaga. He told me to escort him to Kirinyaga on 10/4/2014 to come and view the land. I obliged. He viewed the land and he liked it. We found one man who directed us to the land and one man and a woman. They were namely Francis Kamau and Felista his wife. The brother was Karuru. We went to Chris Maina before meeting the sellers. We agreed we would use Chris Maina to prepare the sale agreement but later the sellers proposed Bwononga who did the sale agreement for us. At the advocates office we paid the sellers Kshs 200,000/- and left for Ruiru. Later Francis and the seller met in my presence at Ruiru and witnessed payment of a further Kshs 40,000/-. The people Maina dealt with are before court over there (pointing at the dock) they introduced themselves as a couple. This is the agreement I witnessed between Maina and the accused persons. The accused persons are the same people who received 40,000/- from the complainant in my presence in Ruiru.”
21. On cross examination, he stated that, “You never took us to the land. We did not contact you when we went to the land. Your husband was there.”
22. In re-examination, he stated that, “Francis is the 1<sup>st</sup> accused herein. The 2<sup>nd</sup> accused posed as his wife.”
23. PW8 John Ndegwa Kamau testified that, “I recall 24/5/2014 at 3 am I was at home when Francis Njoroge asking me to meet him at Kerugoya and escort him in a certain place where he wanted to buy land. I and Francis went and met and went to were Kutus. At Kutus we were found by Francis and Felista over there (pointing at dock). They discussed the subject matter. I drove the vehicle. I sat with Felista and Francis and Njoroge sat behind. The lady led us to Difathas where the land is situated. There were avocados growing on the land. Felista harvested and gave me some. We were back to Kutus. At



Kutus some money was paid out by Njoroge via Mpesa to Felista and Kshs 5000/- to 1<sup>st</sup> accused via Mpesa. A further sum of Kshs 5000/- was paid in cash to the 2<sup>nd</sup> accused. An agreement was drawn. I signed as witness on the same day. Ref to P. Exh 3 - my name and signature appears there and so is my ID number. After signing the agreement, we were given a title deed. When we went to the lands office the title was discovered to be fake. After that we were back to Ruiru. Long after that the complainant told me he had sued the sellers. The accused person had introduced themselves as a couple. The complainant is my neighbour at Ruiru. We do similar work. None of the accused person was known to me.”

24. PW9 Felicity Wanjira King'ori testified that, “I am a lecturer at Strathmore university. I know why I am in court today. I was informed that my farm no. Gichugu/Settlement/Scheme/658 measuring 2.34 Ha is the subject of this case. My ID number was also indicated in the Title number. I have the original title deed which was duly issued by the land registrar. I have my original ID No 0xxxx which has my name is given as Felicity Kianjira King'ori. There was an error in the spelling of my second name in the new generation ID card. I have since applied for the correction of the error. I have a document from the registrar of persons on that behalf i.e. application for registration acknowledgement - MFI-34. In my old ID card which I used while obtaining that title deed bears the correct spelling of my said name WANJIRA. Copy of old generation ID card No 0xxxxxx/xx -MFI 35. I have never lost my ID card or title deed for the subject land. I have never seen the 1<sup>st</sup> accused or the 2<sup>nd</sup> accused. Refer to MFI 25 - This copy of ID does not bear my name. The ID no is also not mine and so is the passport photo appearing thereon.”
25. On cross examination, she stated that, “I was born in 1954 ref to MFI 35 this document shows I was born in 1954. Refer to MFI 25 - According to this ID card (new generation) I was born in 1951 when the name is indicated as Felicity Kianjira King'ori. The date of birth and the 2<sup>nd</sup> name in the old and new ID land do not tally. Refer to MFI 33 - the title deed is issued by Kirinyaga District Land Registrar. I can't recall from which office I got the title. This title does not bear the registrars initials and numbers as it is the practice used in the old ID card in obtaining the title deed.”
26. In re-examination, she stated that, “If I may recall the title deed was sent to me by post. My name appearing on the old ID card tallies with the same appearing on the title deed and so is the ID card numbers. My name is currently captured on the old generation card.”
27. PW10 Evans Mangaa Oyuri testified that, “I am a finger print officer working with the department of registration of persons based in Nairobi. My duties involve verification of documents of person registered under Cap 107. I also search finger prints of known and unknown persons. I have 36 years' experience in service. I have never come across finger prints taken for different persons matching in their extensions. I received a letter dated 19/9/2014 requesting us to provide details of 5 identity cards. Two photocopies of ID card were annexed for analysis. We are concerned with ID card No 9876430 which appears on a copy bearing the name Felista Wanjira King'ori (see MFI 25). Analysis confirmed that the ID card was issued to only one person one Karisa Kazungu Karume. It confirms that Karume has lost his ID card and now holds duplicate ID Card. I have an extract of registered details of Karume. Extract of registration details for Mr. Karume - MFI 36. I went ahead in confirming whether the ID card no given using Felista Wanjira King'ori was genuine it happened that the same was not genuine. (Refer MFI 36). There's a lot of differences between the exhibits given in MFI 25 when compared with MFI 36. There are differences in finger prints, date of birth and date of issue. I confirmed that MFI 25 is not genuine and wasn't issued by us. I also analyzed ID card no XXXXXX in the name of Francis Gachoki Kamau photocopy of ID card for Kamau-MFI 37. The genuine ID card was issued to Francis Gachoki Kamau photocopy of ID card for Kamau MFI 37. The genuine ID card was issued to Francis Gachoki Kamau but when compared with the extract of registration/details for Francis Gachoki Kamau (MFI 38) I noticed that MFI 37 was issued on 10/7/2013 but the current is 16/7/2013 the finger prints on



MFI 37 are not the same as those appearing on MFI 38. I concluded that MFI 37 was not issued by our office and as such is not genuine. Referring to MFI 25 the serial number appearing thereon pressed and issued ID card no 1191989 whose holder is Micah Murigu Weru which further imperious the genuineness of MFI 25. There's a report dated 10/12/2014 which was sent to the District Registrar Kerugoya to forward to DCIO Kirinyaga South and was signed by my senior. Report dated 10/12/2014 - P. Exh 39. Finally, I have issued three extracts of registered ID card number xxxxxx, xxxxxx and xxxxxx and therefore in compliance of 65 (8) of the *evidence Act* this certificate was signed accordingly by my senior. The certificate 23/3/2015 - P. Exh 40. I wish to produce MFI 25 as well I also produce MFI 25 - P. Exh 25 and MFI 37 as P. Exb 37. Refer to MFI 35 - it's a copy of the old generation ID card for felicity Wanjira King'ori. I would like to produce it as an exhibit. MFI 35 - Pexb 35. Refer to MFI 34 this document is from our office. It's an application for a duplicate ID card. Its commonly known as a waiting card. MFI 34 produced as PExh 34. It is a new ID card for Felicity. MFI 41. I wish to produce it in evidence. MFI 31 produced as PExb 31. Accused persons are unknown to me.”

28. PW11 Sgt Loise Wanjiru Mwangi, a CID officer based at Wangu'ru, Kirinyaga South testified that, “I am the investigating officer in this case. On 28/8/2014, at around 4.00 p.m I was in the office, the complainant by the name Francis Maina Njoroge came and reported to me that he had entered into a sale agreement with two people who he stated were husband and wife. He stated their names as Francis Gachoki Kamau and Felista Wanjira King'ori. The two were selling him land in Gichugu/settlement scheme/688. He had paid them Kshs 1 million part of it was paid in cash and the id through Mpesa. He paid the last installment on 28/8/2015 and was given the following documents;
- (i) Title deeds No. Gichugu/Settlement Scheme/1364 & 1365. In the Francis Njoroge Maina & Maurine Wanjiru Njoroge.
  - (ii) Two searches, search No.148 & 149.
  - (iii) Two I/D cards.
  - (iv) KRA Pin certificate bearing the names of Felista Wanjira King'ori.
  - (v) An application for LCB consent and
  - (vi) LCB consent
  - (vii) Two typed sale agreements prepared by Bwonwonga Advocate.
  - (viii) Two handwritten sale agreements. The complainant took the documents to the land's office at Kerugoya and the said documents were declared to be fake. That is when he came to report to the police. I commenced investigations. I went to the LCB (Land Control Board) with the consent letter. He denied to have authored or issued the LCB consent. I took his specimen handwriting and stamp impression. I went to the land's office with the two title deeds. The land registrar stated that the two title deeds and the two searches were fake as they were not generated from his office. I also took his specimen signature and stamp impression and forwarded them to the document examiner in Nairobi. I also forwarded the two identity cards, and forwarded them to the registrar of persons who has already testified. I also obtained a court order to investigate M-pesa A/C No. 07081xxxxx registered under the name of Felista Wanjira and 07074xxxxx registered under the names of Francis Gachoki Kamau. I was provided with the required data by Safaricom which has already been produced as evidence. While still investigating this case, another complainant by the name George Wang'ang'a came and complained that he was sold land by persons who used the same identity cards used by the persons who sold land to the complainant herein. He even had passport pictures of the vendors. He stated that the vendor was Francis Gachoki Kamau. This complainant was also reporting



a case of obtaining by false pretenses. I went to Difathas where I was informed by the 1<sup>st</sup> accused, Francis Gachoki Kamau resides. He was positively identified by the 2<sup>nd</sup> complainant George Wanganga. I called the complainant in this case. He came to court on 26/9/2014 when the said Francis Gachoki was taking plea in George Wangang'a's case, and he also positively identified the 1<sup>st</sup> accused. That case is being heard by Court 1 in Wang'uru Cr. Case No. 532/2014. I had taken his specimen signature and handwriting and also his handwriting. As we were still looking for the 2<sup>nd</sup> accused, another complainant by the name; (can't recall) I only remember the case file number which is Wang'uru Cr. Case No. 572/2014. They reported a case of obtaining by false pretenses against the same accused persons herein. Among the documents they had was a passport photograph of the 2<sup>nd</sup> Accused. I was informed that she resides at Gachoka in Mbeere District. We went to her home at 3.00 am and we were able to arrest her. Whether she was taking plea in Cr. Case No. 572/2014, the complainant in this case was called and he positively identified her. I called nine (9) witnesses to testify. Among them were the owner of the identity card they were using, one Felista Wanjira King'ori and Francis Gachoki Kamau. The names they used are not their names. The I/D cards were produced by the registrar of persons. They were fake identity cards. I took the agreements for examination. The signatures were fake. The signatures in the LCB Consent were fake. The Safaricom liaison officer. During my investigations I established that the two accused persons sold land that never belongs to them. They wanted to defraud the complainant. They impersonated other people. The complainant lost a lot of money in the process. The real name of the first accused is Peter Gichobi Gitara. He had impersonated Francis Gachoki Kamau. The 2<sup>nd</sup> accused is called Rose Gaturi Kariuki. She had impersonated Felista Wanjira King'ori. The said Peter Gichobi Gitara and Rose Gaturi Kariuki are the accused persons before court. When we arrest people at the police station we normally take finger prints to verify that the names they have provided are their real names. In the case of Peter Gichobi Gitara we forwarded his finger prints to the National registration bureau. We received a report dated 7/8/2015 (PMFI 42). We took the fingerprints on 11/6/2015 (PMF43). The report confirmed that his real names are Peter Gichobi Gitara and not Francis Gachoki Kamau. I wish to produce the same as exhibit. PMFI – 42 - produced as PExh 42 - Report of the Principal Registrar of persons dated 7/8/2016. PMFI 43 - Produced as PExh 43 - Fingerprints (P20 Form). We also took the fingerprints of the 2<sup>nd</sup> accused on 12/2/2015 - P20 A - (PMFI 44). We forwarded to the registrar and we received a report dated 7/8/2015 - PMFI 45 from the Principal Registrar. The report confirmed that the fingerprints belong to Rose Gaturi Kariuki and not Felista Wanjiru King'ori. PMFI 43 - produced as Pexh. 44 - P20 A. PMFI 45 - Produced as Pexh 45 - report of the Principal Registrar dated 7/8/2015. Rose Gaturi Kariuki and Peter Gichobi Gitara are the accused persons in the dock.”

29. On cross examination, she stated that, “The finger prints are yours. It was confirmed that your names are Rose Gaturi Kariuki. We were also given a photo image of you. You transacted under the name Felista Wanjira King'ori. The 1<sup>st</sup> accused called himself Francis Gachoki Kamau.”
30. In re-examination, she stated that, “The first accused is called Peter Gichobi Gitara.
31. DW2 Rose Gaturi Kariuki the appellant herein testified that, “On a date I cannot remember in February 2015, Madam Wanjiru of Wang'uru CID office came to my home with two police officers. They searched my house. They did not recover anything. They arrested me. Took me to Wang'uru police station and detained me for a week. I was later charged in court. Francis, the complainant told the police not to take me to court because he did not have evidence. Francis used to be my friend, Boyfriend. There was no evidence produced in Wang'uru court. The case was later transferred there. No evidence



was adduced against me in this court. There is no document which contains my fingerprints. There was another suspect by the name Felistus at the station. He was released by the police. I am not Felistus. The only thumbprint of mine in court is the one I gave when I was arrested. I did not do any transactions with the complainant. The witnesses lied.”

32. On cross examination, she stated that, “Francis Njoroge the complainant was my boyfriend. I used to cohabit with him in Kutus. He threatened to teach me a lesson. I did not execute any agreement (Pexh 2). That is not my signature. I am not Felistus. Felistus was discharged. I was framed. I was arrested in 2015. The first accused was arrested earlier. I met him in court. I did not commit any offence. I was framed by the complainant and all the witnesses.”

### **Submissions**

33. The appellant prays for an acquittal on the grounds that she is remorseful and has reformed. She urges the court to consider a concurrent sentence as opposed to the consecutive one imposed by the trial court, or in the alternative, consider the time spent in custody, and strike off the remainder of the sentence.
34. The respondent submits that the case against the appellant was watertight and solid, and cites *Bukenya & Others v Uganda* (1972) EA 549 and *Miller v Minister of Pensions* [1947] 2 All ER 372

### **Issues for determination**

35. From the grounds of appeal as framed, the twin issues for determination are whether the offences were proved beyond reasonable doubt and whether the sentences were harsh and excessive.

Determination

Obtaining by false pretences

36. This offence is defined under Section 313 of the Penal Code as follows:

“Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanor and is liable to imprisonment for three years.”

37. The three essential elements of the offence as stipulated under the aforementioned section are obtaining something capable of being stolen, obtaining it through a false pretence, and obtaining it with intent to defraud.

38. False pretence is defined under Section 312 of the Penal Code to mean:

“Any representation, made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.”

39. The complainant testified as PW4 that, “In December 2013, one Karuru apprehended me and offered to look for a land for me to buy. Thereafter he called and told me he had found land at Difathas. I and Muchiri my friend went to the site where we found Karuru with two other girls. I offered to buy 2 acres. I asked Karuru for the ownership documents. He told me he would ask the owner to provide the documents. In April 2014, I and Karuru went to the land’s office for a search. According to the search the owner was Felister Wanjira. On 10/4/2014, I met with Felista at Equity Bank Mwea.



I was accompanied by friend one Muchiri. We arrived very early. Francis and the said Felista arrived thereafter. By the time we got at the advocates office we had settled the sale agreements. The purchase price was Kshs 475,000 for 3 acres. I paid a down payment of Kshs 200,000 at the advocates office. The transaction was witnessed by Francis. I would also send the money to Felista via phone. On 22/5/2014 I and Maureen went to Bwonwanga's office. The seller Felister came and sold 30 acres at Kshs 310,000. On 22/8/2014, I paid the final installment to Francis and Felista at kiburi chicken place. I gave 70,000 to Felista and 80,000 to Francis. Upon that payment I was given two original title deeds namely 1364 and 1365 (MFI-1 and MFI-2) in the same day I went to conduct a search at lands office. I found that land no. 1364 which had been sold to me by one Chomba. In April 2014, I had conducted a search which showed that land was Felistus." On cross examination, he stated that, "You and Francis once took me to the farm land and showed me these boundaries." In re-examination, he stated that, "The accused person gave me copies of their ID cards and PIN certificates. 1364 and 1365 ought to be subdivisions of 688 shown in the sale agreements. The down payment was given by Felista by myself at the office of bwonwanga."

40. His testimony was corroborated by PW7 and PW8, who accompanied him in his search for land to buy and witnessed the purchase price being paid to the appellant.
41. PW6 testified that, "On 19/6/2015 I extracted the required data showing registration details and Mpesa statements. 07081xxxxx is registered to ID No xxxxxx Felista Wanjira King'ori. The Mpesa statement covers 30/3/2014 -22/8/2014. The investigations highlighted these transactions between Felista and Francis Njoroge Maina of 0722xxxxx. Of note is that in all the transactions Francis is sending money to Felista Wanjira King'ori."
42. PW9, the proprietor of the land in question, testified that, "I was informed that my farm no. Gichugu/Settlement/Scheme/658 measuring 2.34 Ha is the subject of this case. My ID number was also indicated in the Title number. I have the original title deed which was duly issued by the land registrar. In my old ID card which I used while obtaining that title deed bears the correct spelling of my said name WANJIRA. Copy of old generation ID card No xxxxxx/xx - MFI 35. Refer to MFI 25 - This copy of ID does not bear my name. The ID no is also not mine and so is the passport photo appearing thereon."
43. PW10, the fingerprint officer testified that, "We are concerned with ID card No xxxxxx which appears on a copy bearing the name Felista Wanjira King'ori (see MFI 25). Analysis confirmed that the ID card was issued to only one person one Karisa Kazungu Karume. I went ahead in confirming whether the ID card no. given using Felista Wanjira King'ori was genuine it happened that the same was not genuine. (Refer MFI 36). There's a lot of differences between the exhibits given in MFI 25 when compared with MFI 36. There are differences in finger prints, date of birth and date of issue. I confirmed that MFI 25 is not genuine and wasn't issued by us."
44. Taking the evidence before the court as a whole, there is nothing in the testimony of the appellant to discredit the consistent evidence of the prosecution witnesses. This court finds that the appellant, with intent to defraud, obtained Ksh. 1,000,000 from the complainant, by falsely pretending that she was the owner of L.R No. Gichugu/Settlement/Scheme/658.

### **Making and Uttering a false document**

45. Making a false document is provided under section 347 of the Penal Code as follows:

“ Any person makes a false document who —

- (a) makes a document purporting to be what in fact it is not; or



- (b) alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document; or
- (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorized would have altered the effect of the document; or
- d) signs a document—
  - (i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing; or
  - (ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing; or
  - (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person; or
  - (iv) 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.”

46. Uttering a false document is provided under Section 353 of the Penal Code as follows:

“Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.”

47. Forgery is provided under Section 349 of the Penal Code as follows:

“Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.”

48. In this case, the appellant presented to the complainant an Identity card bearing the name of Felista Wanjira Kingori, two certificates of official searches, a Land Control Board Consent and two title deeds, which she knew were forged. PW1, PW2, PW5, PW9 and PW10 were categorical that the aforesaid documents had been forged.

49. When the investigating officer (I.O.) conducted thorough investigations, she discovered that the LCB consent, the 2 title deeds and the two certificates of official searches the appellant had given to the complainant herein were all forgeries.



## Personation

50. The applicable provision in this case, Section 382 (1) of the Penal Code provides that:
- “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.”
51. The investigating officer affirmed that after fingerprints were taken from the appellant, it was established that her real name was Rose Gaturi Kariuki and not Felista Wanjira King’ori, and the Identity card she had used was fake. The appellant was positively identified by the complainant herein when she was arrested in another fraud related case.
52. In her sworn defence, the appellant herein merely denied committing the offences and insisted that she had been framed by the complainant, who was her boyfriend. That defence was bare and devoid of any evidentiary support.
53. From the totality of the evidence on record, this court finds that the prosecution proved its case against the appellant beyond reasonable doubt. This court finds that the conviction on all 8 counts was safe.

## Excessive sentences

54. Although section 26 (3) of the Penal Code permits a trial court to impose a fine as an option to an imprisonment sentence except in cases of minimum sentences, and some provisions expressly prescribes the imposition of a fine or sentence of imprisonment or both, it is all in the discretion of the trial court, and unless it can be shown on the principles for appellate interference with the discretion of the trial court in sentencing, that the sentence was inordinately, low or high or failed to take into account some material fact or took into account irrelevant considerations or it was plainly wrong, the appellate court shall not interfere. (See *Wanjema v R* (1971) EA 493).
55. Sentencing is in the discretion of the trial court and an appellate court shall not interfere with the sentencing discretion of the trial court merely because it might itself have imposed a different sentence, and the Court of Appeal has reiterated this position in *Bernard Kimani Gacheru v Republic* [2002] eKLR:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”

56. In sentencing the accused persons herein, the trial court said as follows:

“I have considered the mitigation by the accused persons. They are not first offenders. They are currently serving a sentence in another case. A custodial sentence is suitable in this matter and will also serve as a deterrent.

Therefore, in respect of counts I, II and III, I sentence each accused to serve 3 years imprisonment respectively.



In respect of counts IV the 1st accused is sentenced to serve 3 years imprisonment respectively.

In respect of counts V, VI and VIII, the second accused is sentenced to serve 3 years imprisonment.

Each accused is sentenced to serve 3 years imprisonment in count VIII.

The 1st accused is sentenced to serve 5 years imprisonment in count IX. The second accused shall also serve 5 years imprisonment in count X. Each accused has 14 days right of appeal.

M. Nasimiyu- SRM

30. 6.2017”

57. The sentences provided under Sections 313, 347, 349 and 353 of the Penal Code for obtaining money by false pretences, making a false document, uttering a false document and forgery, which are the subject of Counts I, II, II, IV, V, VI, VII and VIII are imprisonment for 3 years.
58. The offence of personation contrary to section 382 of the penal Code is a misdemeanour, and Section 36 of the Penal Code provides for general punishment for misdemeanours as follows:
- “When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine, or with both.”
59. This court finds that the trial court erred in principle when it sentenced the appellant to 5 years’ imprisonment for personation, which misdemeanour is punishable with imprisonment for a term not exceeding 2 years or with a fine or both.
60. On the request for concurrent service of the sentences, section 37 of the Penal Code requires clear direction as to the mode of service. The trial court did not advert to the issue. As the offences were committed as part of the same series of transactions, there shall be an order for the sentence to be served concurrently from the date of sentence in the trial court.
61. From the record, the trial court does not appear to have considered the direction and exercised the discretion in section 14 (1) of the Criminal Procedure Code which provides as follows:
- “14. Sentences in cases of conviction of several offences at one trial (1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.”
62. In similar terms, Section 37 of the Penal Code provides the substantive law as follows:
- “37. Sentences when cumulative
- Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed



after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.[Act No. 5 of 2003, s. 7.]”

63. In *Ng’ang’a v Republic*, High Court, at Nairobi (February 11, 1976) Trevelyan J & Sachdeva Ag J. Criminal Appeal No 882 of 1975 (1976) KLR where the appellant was convicted of housebreaking and theft committed in one criminal transaction and the trial Magistrate awarded consecutive sentences, citing the accused’s bad record as a reason for doing so, it was Held:

”Concurrent sentences should be awarded for offences committed in one criminal transaction. The fact that the accused had a bad record is no excuse to alter the rule. If the court has insufficient powers to punish it must refer the matter to a higher court as set out in Section 221 of the Criminal Procedure Code.”

64. It is not possible in the circumstances of this case to say whether the resultant aggregate sentence of consecutive imprisonment sentence totaling to 26 years is what the Court conscious decision on the penalty for the offences in the matter. It may be that the trial Court intended that the accused would serve an imprisonment term as a repeated offender but the length of that term is not certain. All the record shows is that the trial court considered that the accused were not first offenders and that a custodial sentence was called for; but no consideration is shown as to the mode of serving the sentences passed in the various counts - whether concurrent sentence as directed by sections 14 of the Criminal Procedure Code and 37 of the Penal Code was appropriate.
65. It is up to this court to correct the error by default. Had the trial court considered that the offences in the Charge Sheet were committed in the course of the same transaction leading the offence of obtaining by false pretence charged in Count I, the court would no doubt have come to the conclusion that the sentences imposed on the accused should be served concurrently. For this default error in principle, the appellate court is entitled to interfere with the sentencing discretion of the trial court. (See *Wanjema*, supra.)
66. In view of possible grave unintended consequences of failure to consider whether to order concurrent and consecutive sentences as evidenced in this case where the accused is then required to serve an aggregate sentence of 26 years imprisonment for counts related to a principal offence of obtaining by false pretences the sum of Ksh.1,000,000/-, which this court considers excessive by all standards and liable to setting aside on that ground only, this court repeats its exhortation on trial courts to ensure compliance with the implied duty under section 14 of the Criminal Procedure Code and section 37 of the Penal Code.

## Orders

67. Accordingly, for the reasons set out above, the Court finds the appeal to be merited and it is allowed in the following terms:
- a. The appeal on conviction is dismissed.
  - b. The sentence of 5 years’ imprisonment for personation contrary to section 382 of the Penal Code is set aside and substituted with an imprisonment for 2 years.



- c. Upon an order for concurrent sentences of the sentences imposed by the trial court in the various counts, the period of imprisonment for three (3) years translates to two (2) years of actual custody with remission of 1/3 of the sentence under section 46 of the *Prisons Act*.
- d. As the appellant has been in custody for eight (8) years since sentence on 30/6/2017, she has more than served her concurrent sentences in full, and there shall, therefore, be an order for her immediate release from custody unless she is otherwise lawfully held in any other case.

Order accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for DPP.

Appellant in person.

