



**Theuri & another v Republic (Criminal Appeal E063 & E064 of 2023
(Consolidated)) [2025] KEHC 12422 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E063 & E064 OF 2023 (CONSOLIDATED)**

**EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

SAMSON THEURI 1ST APPELLANT

JOHN BAPTISTA KANGA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction by Hon. A. K.
Ithuku CM in Kerugoya Cr. No. 196 of 2019 on 13/12/2023)*

JUDGMENT

1. Samson Theuri Muchiri and John Baptista Kanga, the appellants herein were charged with forgery contrary to Section 345 as read with section 349 of the Penal Code. The particulars were that on diverse dates between 1/4/1997 and 5/7/1997, at unknown place within the Republic of Kenya jointly together, with intent to defraud forged certain documents namely allotment letters for Plot No. 160 Wangururu Township purporting them to be genuine documents issued to Sath Construction Ltd by the commissioner of lands Nairobi a fact they knew to be false.
2. They faced other related offences in 5 counts as follows:
 1. A 2nd count of uttering a false document contrary to section 353 of the Penal Code. The particulars were that on 1/4/1997 at land's office Nairobi in Nairobi County within Nairobi Region jointly together, knowingly and fraudulently uttered a forged letter of allotment for Plot No. 160 Wangururu Township purporting it to be allotment letter of Sath Construction Ltd.
 2. A 3rd count of uttering a false document contrary to section 353 of the Penal Code. The particulars were that on 5/7/1997 at land's office Nairobi in Nairobi County within Nairobi



Region jointly together, knowingly and fraudulently uttered a forged letter of allotment for Plot No. 160 Wangururu Township purporting it to be allotment letter of Sath Construction Ltd.

3. A 4th count of obtaining registration by false pretence contrary to section 320 of the Penal Code. The particulars were that on 8/9/2016 at Kerugoya land's office in Kirinyaga County jointly together, willfully procured certificate of lease for Mark and Bill Holdings Limited a certificate of lease for Plot No. 160 Wangururu Township by falsely pretending that it was a genuine certificate of lease.
 4. A 5th count of making a document without authority contrary to section 357 of the Penal Code. The particulars were that on diverse dates between 1/4/1997 and 5/7/1997 at an unknown place within the Republic of Kenya jointly together, with intent to defraud and without lawful authority or excuse made certain documents namely allotment letters for Plot No. 160 Wangururu Township purporting them to be genuine allotment letters issued to Sath Construction Ltd by the land commissioner Nairobi.
 5. A 6th count of procuring execution of documents by false pretence contrary to Section 355 of the Penal Code. The particulars were that on 8/9/2018 at lands office in Kerugoya township within Kirinyaga County, jointly together, by means of false and fraudulent representation procured land registrar Kerugoya to sign and execute a certificate of lease for Plot No. 160 Wangururu Township.
3. They denied the charges but upon full trial, they were acquitted on the 1st, 5th and 6th counts, but convicted on the 2nd, 3rd and 4th counts.
 4. In passing the sentences, the trial court said that:

“I note the plea in mitigation. The court has been told that the accused persons are elderly and senior citizens. The complainant ask for custodial sentence. It is not lost on me that the dispute now moves to civil court. The court with jurisdiction will determine the outstanding issues. Sentence policy serves deterrent, rehabilitative, retributive and restorative purposes. In this case I would grant the accused persons the option of a fine in the 2nd and 3rd counts, they will pay Kshs. 50,000/= each for each count or serve in prison for one year. In the 4th count they will also pay Kshs. 50,000/= each or one year in prison. The sentences will run concurrently.”

The Appeal

5. On appeal, the appellants raised 4 grounds of appeal as follows:
 1. The learned trial magistrate erred in law and fact in failing to properly analyse the evidence adduced in court and the applicable legal principles before making a finding that the letter of allotment dated 5th July 1997 was forged.
 2. The learned trial magistrate erred in law and fact in making a finding that the letter of allotment dated 5th July 1997 was uttered by the appellant, whereas the said document was issued by the Ministry of Lands, Arthi House, and a receipt issued.
 3. The learned trial magistrate erred in law and fact in failing to make a finding that there was no evidence adduced to connect the appellant with the letter of allotment allegedly dated 1st April 2019, which document was strange to the appellant.



4. The learned trial magistrate erred in law and fact in failing to properly analyse the evidence of all the prosecution witnesses, the evidence adduced by and on behalf of the appellant and failed to consider the issues raised by the appellant in his submissions before convicting the appellant on counts two, three and four.

Duty of Appellant Court

6. 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

7. PW1 Patrick Njiru Kuria, the complainant herein testified that, “I’m a businessman in Mwea. I live in Mwea. In 2013 I received a call from one Githinji. He told me that there was property on sale at Ngurubani Town. It was located in Mwea. It was No. 159. I enquired about ownership. They were selling at 13.5 million. I entered into an agreement with five families. One of the family members stated that he could only receive money one the lease on the land expired. [witness shown copy of certification for lease for Plot No. 159]. It marked MFI-1. We drew an agreement. It is dated 5.6.2013. It is marked MFI-2. The purchaser is myself. The vendors were; 1. Joseph Njeru 2. Muriuki Githinji 3. Ngari Kamanga 4. Nyaga. The purchase price was Kshs.14.5 million. It was to be shared equally by the families. I paid through ETF transfers. The purchase price was paid. The vendors signed the agreement. At the time of purchase the land was occupied by the first accused. I talked to him. He had a liquor business. He was a tenant. I was shown a lease agreement. It’s before court. It is dated 1.1.2011. It was to expire in December 2015. It is marked MFI - 3. In November 2015 the sixth member of the family asked for his money. I paid him Kshs. 5 million. We entered into a sale agreement. It is dated 15.12.2015. It is marked MFI-4. The tenant [1st accused] did not vacate. He went to the rent tribunal at Embu. It was BPRT 125/15. He was asking for extension of tenancy. The orders were not granted. The application was dismissed. The tribunal ruled that I was the new land lord and he should pay me. The ruling is marked MFI- 5. The 1st accused did not pay rent as ordered. I instructed my advocate to have the tenant removed. A distress for rent was instituted. We filed application No. 39 of 2017. I was allowed to break in and levy distress for rent and acquire vacant possession. The 1st accused was evicted. The order is marked MFI-6. Around February 2016 I went to the property. I wanted to fence. An organisation called Ollin Sacco came saying that the property belonged to them. They served me with a court order from E.L.C Kerugoya. The order is ELC No. 65/2017 is MFI- 7. I reported the incident to Wang’uru Police Station. I realised that the plot number had been inter changed from 159 to 160. I got to know that the record was tampered with. The police stated that the 1st accused person had tampered with the record. On the record there is 160 and 159. Plot No. 160 is fully built by the owner. 159 is mine. Plot No. 160 has rental rooms and stalls. When I purchased the plot it was 159. The building plan shows Plot No. 159. The plan is marked MFI-8.”
8. On cross examination, he stated that, “The vendors were the legal owners. They had letters of administration. Their fathers were the registered owners. I confirmed that their fathers had letters of allotment. I can produce beacon certificate. The plot was 50 x 100 feet. The size is not indicated in the sale agreement. I confirmed through PDP and RIM. [Witness referred to MFI 8]. It is an approved building plan. It is signed by one person. It is signed by physical planner. It has not been shaded. The first accused was a tenant to Francis Gachui and others. Witness shown a plan]. It shows plot 160 neighbouring the tarmac. 159 is adjacent. Next to 159 is 158. According to the map 160 looks same size as 159. [Witness shown green card for Plot 160]. It shows the size 0.083 ha. Green card shows



0.0557 ha. I'm now aware of Sath Construction Limited. [Witness shown allotment letter]. It is for Plot No.160. It was issue to Sath Construction Limited. [Witness shown certificate of lease]. It is for Plot No. 160. The size is 0.083. It was issued on 8.7.2016. I have seen a beacon certificate in favour of Sath Construction. It is by David Muchiri Kogi. He was a county surveyor. It is signed and dated. The beacon certificate has a shaded map. I was shown beacon certificate. There was a case in Wang'uru Court. I was not a party to the matter. In the tribunal case I was declared the owner. I have documents showing that I am the owner. In the distress for rent case the 1st accused had not been heard. The ELC order was issued on 3.5.2017. There was no property on the plot. His bar and restaurant were removed. The county office interchanged the numbers. I'm not aware of the sale of the land by second accused persons company to 1st accused. I have O' level education. I'm 51 years old. I was born in 1969. I'm a businessman. I'm a millionaire. The Plot No. 160 was not owned by Sath Construction. It was owned by Mercy Njambi. I'm not aware of the relationship between 2nd accused and Plot No. 160. I have been sued at ELC No. 14/2018 by Ollin Sacco. It was filed in Kerugoya, moved to Embu and later back to Kerugoya. The plot in issue is 160 Wang'uru. My Plot is 159. In the case I have filed my defence. [Witness shown letter of allotment issued to Sath Limited. The subject matter is Plot No. 160. It is dated July 1997. I'm not aware of a certificate of lease issued. I have seen one issued on 20.7.2016. I acquired Plot No. 159. I am not claiming Plot No. 160. The two plots are different in size. [Witness shown map of Wang'uru Market]. According to the map 160 is on the tarmac front. 159 is on the second row. The plots were interchanged in the county offices. [Witness referred to civil case filed in Wang'uru]. My complaint to the police was about Plot No. 159. I stated that the accused person had tampered with the documents. I'm not the one who presented the forged documents to the police. It belongs to the accused person. I'm seeing it for the first time. The 1st accused gave it to CID. The accused persons exchanged the plot. I was shown beacons by the sellers. Measurements were taken. Wambugu, the surveyor showed me the beacons. Githinii was also there. There are orders of injunction against me in the ELC case.”

9. In re-examination, he stated that, “One of the vendors was registered on the property. The others had a grant. The size of the property is indicated in MFI-3. It is described as 100 feet by 100 feet. The map was not shaded. It was marked. I was shown a beacon certificate by the surveyors. Plot 160 is situated where 159 is supposed to be. The allotment letter to the accused was shown to me by the investigating officer. I have minutes from county council showing that I was the owner. The ruling of the tribunal also showed that the land was mine. [Witness referred to the ruling]. Paragraph 2 and 3 referred to. The plots had been interchanged. I did not participate in the tenancy case filed at Wang'uru. I was not a party. The charges were done by the investigators.”
10. PW2 Francis Mamwaka Mulu, testified that, “I worked with the Ministry of Lands upto 2007 from 1987. I was chief land administration officer by the time I retired. In 1997 I was based at Ardhi House. I was land officer 1. Around July 2017 I was in Kitui office. Some people came. They said that they were police officers from Mwea. I was shown a letter of allotment. [Witness shown a letter of allotment]. It was for 1st April, 1997. It is for Plot No.160 Wang'uru Market. He wanted me to confirm whether I'm the one who had issued it. I disowned the document. The signature on the reverse side was not mine. I was required to record statement. I complied. After sometime I was called to Mwea. I was asked to supply documents signed earlier. I was also asked to supply specimen signatures. Later was informed that the questioned signature was not mine. The allotment letter date 1.4.1997 is MFI - 9. [Witness identifies specimen signatures]. They are 8. They are marked MFI - 10. [witness referred to a document dated 5.7.1997]. It was shown to me by defence Counsel in court I had not seen it before that date. I'm not the one who signed it. In 1997 I was preparing letters of allotment. We were many officers.”
11. On cross examination, he stated that, “In 1997 I was based at Ardhi House Nairobi. I was land officer one. A lease certificate cannot issue without ascertaining the availability of land. A beacon certificate



shows boundaries. They are identified by a surveyor. I was shown the original allotment letter. It was not signed by me. [Witness referred to his statement]. It says that the signature resembled mine. [Witness shown letter of allotment dated 5.7.97]. It is for Plot No. 160 Wang'uru Market. It is issued to Sath Construction Company Limited. It is signed for me. I have not been questioned about the signature. [Witness referred to certificate of lease]. It is for Plot No. 160 Wang'uru Market. It is dated 1.7.1997. The certificate relates to the letter of allotment dated 5.7.1997. I have never visited the site of the plot. I recorded a statement with the police. In 1994 I was District Land Officer Kirinyaga. I'm trained in land administration. For a plot at Wang'uru the local authority would allocate land. The allottee would request for lease from the local authority. The lease would be prepared by commissioner of lands. The commissioner had to confirm that the plot had no dispute. No lease can be issued unless there is a map produced. The R.I.M ascertained the existence and location of the plot. The maps are prepared by director of surveys. [Witness shown map of Wang'uru town]. It is an amended R.I.M. It shows Plot No. 160. It has a tarmac frontage. There is also Plot No. 159 on the map. They are different plots. The numbers cannot be swapped. The signature in 1.4.1997 is not mine. The one dated 5.7.1997 is not mine. I did not sign for any document in Wang'uru town. The signature resembles mine. I cannot remember the name of the officer who brought the document to me. [Witness referred to his statement]. It says that I was authorized to sign documents on behalf of the commissioner for lands. I would remember if I had signed an allotment letter for Mwea. I do not remember signing leases for Mwea. There were instances where we prepared leases on basis of documents from county council. The letter of allotment is a forgery. I was once Lands officer Kirinyaga County. In 1997 I was at Ministry of Lands Headquarters. I used to sign letters of allotment. I left employment in 2007. I resigned voluntarily. I was not dismissed. I wrote statement in respect of letter dated 1st April 1997. I did not mention the letter for 5th July 1997 [witness referred to his statement]. The signature in the letter dated 1.4.1997 is not mine. The one dated 5.7.1997 is also not mine. It resembles my signature to some extent. The letter is indicated as certified copy of original. I'm not familiar with the handwriting. It led to issuance of a lease. The letter is not genuine. Anybody can forge my signature and attach standard conditions. We used to prepare leases without letters of allotment. It was not necessary to do this letter. It was done based on documents from clerk to Council. To get Council land are applied to Clerk to Council. I was trained as a Land Administrator. Plots could be allocated while unsurveyed. I'm not aware that the letter of allotment was taken to the document examiner. I was not interrogated on the same. I do not know whether plots 159 and 160 have files. [Witness referred to MFI 20]. It has a reference No.87280/22 Vol2/FO.151. It is in respect of Plot No. 160 Wang'uru town file number is 87280/22 Vol.21/Fo.127. I do not have any information that the folio does not relate to Wang'uru Plot No. 160. I was in headquarters for about 6 years. I have not seen original of MFI 20.”

12. In re-examination, he stated that, “I did not sign the letter dated 1.4 2020. The signature on MFI 20 is not mine. The comments on the side were made when I had left the Ministry. I had no disciplinary proceedings against me. My signature samples were taken by the investigating officer. I'm not in a position to confirm whether the reference numbers refer to an existing file.”
13. PW3 Stephen Wambugu testified that, “I work with Kirinyaga County Government. I am a surveyor. I have been with them since 2013. I fix beacons and boundaries. I'm familiar with Plot Nos. 159 and 160 situated at Wang'uru. I was asked to fix beacons for 159. I realised that the plots are not as they are on the ground and maps. Plot No. 159 are interchanged on the map. No. 160 is indicated as the fronting on the main road. On the ground Plot No. 159 is the one fronting the main road. [Witness referred to a map]. It shows 160 as the one on the road. On the ground 159 is the one on the road. I referred to a building plan for 159. It shows it as the one on the main road. It was drawn and approved in 1979. The measurements are the same as the ones on the ground. The mistake might have been caused by numbering. The issue of numbering was discussed at assembly. It was recommended that



the numbers interchange but occupation remains the same. The plots are about 100 by 50 feet. Plot No. 159 is slightly bigger because it is on the road. It has a corner shape. The plots are allocated first. They are then numbered. The occupation on the ground takes precedence. The numbering should be changed. I referred to Plot No. 159 and 160. I have building plans and maps for both plots. Numbers are issued after the allocation. Numbers are given to owners of the plot. [on site]. The court is shown a building plan. For Plot No. 159 is the one from the road. Refers to MFI 2 building plan corresponds with occupation on the ground. It has a curved shape. The plan is approved. The map MFI-11 indicates the same ground as 160 instead of 159. It is the one next to the road. The owner of 159 according to map has approved plans for 160. When the dispute came the advice was that since the parties had developed existing plots they should exchange. The next plot is triangular. Plot No. 159 is a ¼ acre on the building plan. I have building plan for Plot No. 160. It is owned by Mr. Muriithi. It corresponds with the ground. It was approved. On 20.8.1992. It is MFI 32. The plot is 100 feet by 60 feet. The shape corresponds with the map. On the map it is Plot No. 159.”

14. On cross examination, he stated that, “I’m a surveyor. I have a diploma from Kenya Institute of mapping. I got to learn about the plots in a disputes resolution committee. It was around 2017. Kirinyaga County Assembly had made some recommendations. The disputants were not present. I visited the two plots in 2017. One plot is bigger than the other. [Witness shown a beacon certificate]. It shows Plot Nos. 159 and 160. I’m not aware of a lease certificate for 159. [Witness shown a green card issued in 1980 for 159]. The size is 0.0557 ha. I do not know when lease title was issued for Plot No. 160. [Witness shown a certificate of lease]. I’m not clear on the dates. It shows that it was issued in 2016. It runs from 1997 for 99 years. The owners occupied the plots differently from the map. In 160 there is a building. It is a permanent building Plot No. 160 is owned by a lady. I cannot remember the name. [Witness shown a certificate of lease]. It shows owner as Ollin Sacco. [Witness shown a survey map for Wang’uru] According to the map 160 is on the tarmac frontage. The parties can agree to swap. [Witness referred to his statement]. I was not part of the investigation by county assembly. I do not know who appeared before the assembly. I was not involved in the dispute in 2013. The plots on the map follow a numerical sequence from 157 to 160. The interchange was prompted by the county assembly. I’m not aware that the county assembly sat while the matter was already in ELC court. I do not know whether the county assembly can discuss a matter pending in court. One plot is bigger than the other. I have seen the lease certificates. The owner of Plot No. 160 was a lady. I have not seen a lease in her name. I have not seen a revocation of a lease for 160. [Witness shown beacon certificate for Plot No. 160]. It was issued to Sath Construction Limited. The plot is identified. According to the map it is next to the road. It is the bigger plot. A beacon certificate means that the surveyor visited the ground. This certificate was issued in 2015. I do not have a different one. I have the map of this town. It is MFI 11. Plot Nos. 159 and 160 are surveyed. They appear on the map. Before leases are issued the existence of the plot is confirmed. Leases were done by the Commissioner of lands. It is the local authority that allocates the plot I do not deal with leases. The owners had agreed to swap. The value of the plots are not the same. The one on the road frontage is different. They were to swap numbers not occupation on the ground. According to the map the plot next to road is 160. The one next to it is 159. [witness referred to MFI 12]. It is for Plot No. 159. It was owned by Nyaga Gichuku and partners. [witness referred to MFI 33]. It was drawn for Mr. Paul Muriithi. He owns the plot next to the one fronting the road. It is developed. It is indicated as 160. The drawings were approved. The owner of 160 is Purity Njambi Muriithi. I do not know who was the owner of building in 159. People cannot be forced to swap. According to our records 159 is owned by Patrick Njiru. I do not know who was the 1st allottee for the plot fronting the road. I do not know about a beacon certificate identifying plot on the road as 160. The genesis of plots starts with the local authority. The owner of the plot currently is Patrick Njiru Kuria. That is as per our records. Plot No. 160 is owned by Purity Njambi Muriithi. I do not know who pays rates for the plots.”



15. PW4 Purity Njambi Muriithi testified that, “I’m a farmer. I own a plot at Wang’uru. It is Plot number 160. It was given to my husband by Geoffrey Kamau. It has tenants on the plot. It has a permanent building. It was transferred to my husband. On his death it was transferred to me. I have now included my daughter as a co-owner. I have minutes showing that it belongs to Geoffrey Kamau. The extract of minutes dated 6.3.1984 marked MFI - 13. I have transferred documents dated 26.7.1987. They are marked MFI-14. The plot was built by my late husband. I have the authority to develop. It is marked MFI - 15. My husband died and I filed a petition for letters of administration. I got a certificate of confirmation of grant. It is dated 29.4.1998. It is MFI- 16. The plot was transmitted to my name. I have minutes showing transfer to my name. Extract of minutes dated 1.10.2012. It’s MFI-17. Later my daughter became a co-owner. I have minutes showing the co-ownership. Minutes dated 1.10.2012 marked MFI- 18. I have been in possession of the plot for about 30 years. The plot is near the road to Embu. It is on the second row. It is 60 x 100 feet. I have a map for the plot. [Witness shown MFI-16]. She points out her plot. It is on the 2nd row. I have lived on Plot No. 160 all those years. I have been paying rent and rates. I have a bundle of receipts. In 2020 I have paid Kshs. 4,000/= . Receipt dated 16.3.2020 is MFI-19 [a]. Receipt dated 28.2.19 is MFI- 19 [b]. A receipt for 2012 is MFI-19[c]. A receipt for Ksh. 1,210/= paid on 10.3.1997 is MFI-19 [d]. A receipt for transfer date 26.12.1987 is MFI-19 [e]. I’m in possession of Plot No. 160.”
16. On cross examination, she stated that, “My husband was Paul Muriithi Kanuku. I knew Geoffrey Kamau. He had many plots in Wang’uru. He is now deceased. I do not know the purchase price. I do not know about the sale agreement. I can’t remember the year of the sale. I live on the plot. I lived there with my husband. When my husband took possession it was not developed. We now have stone building. I have the originals of my exhibits. I do not have the original for MFI-13. MFI-14 is also not with me. I have photocopies. The plot measures 60 x 100 feet. My plot is on the 2nd row from the tarmac. I have tenants. I’m the land lady. [Witness shown MFI- 11 she points to plot number 159]. I do not know about beacons. My plot is not a corner plot. My husband bought 160 from Geoffrey Kamau. It was transferred. I do not know about the demolition in the adjacent plot. I do not know about ownership of Plot No. 159. I was told there is somebody with documents of ownership for 160. I do not have a lease certificate for 160. I have not sold my plot to anybody. We have been paying rates since my husband got it. [Witness referred to receipts]. I have lived on 160 all along. It is on 2nd row. I’m not claiming the one with tarmac frontage. I do not know Nyaga Gichuki. I knew about six families who owned the plot next to the tarmac. I have no interest of the plot next to the road. I have transferred documents and minutes. I do not have allotment letter. I do not have beacon certificate. I do not have lease certificate.”
17. In re-examination, she stated that, “I have the agreement. I cannot remember the year of sale. I have copies of documents.”
18. PW5 Samuel Mwangi testified that, “I’m from the department of lands Kirinyaga County. I’m the director urban development. I’m a land economist. I’m in administration of urban properties. Previously I was working with Ministry of Lands Nairobi. I got to learn about plot number 160 when I was requested by Mr. J. M. Muthike C.E.C lands to do a report. The report was required by the county assembly. The report was in writing vide letter dated 27.6.2017. The letter is by Mr. Muthike. I compiled a report. It was signed by the C.E.C lands. We visited the plot with a surveyor. We also visited the Commissioner of Land’s Office. The plot is next to Embu Highway in Wang’uru town. It was fenced with iron sheets. There was demolition going on. Two numbers were conflicting. They are 159 and 160. Our duty was to identify physical location. We found that the 160 on the ground was not as documented. The owner of 160 - Patrick Njiru was not present. There were representatives. There was a lady - Purity Mureithi claiming 160. 159 and 160 had leases. At the land commissioner



office we got letter of allotment for 160. It was issued on 5.7.1997. It was issued to Sath Limited. It is marked MFI-20. We extracted a receipt for payment for the lease. In our records we had a letter of allotment dated 1.4.1997 granting the plot to Sath Limited. In our records it was showing that Purity Njambi was paying rates for Plot No. 160 MFI-21. Our records were showing that Plot No. 159 was being paid for by a group of six people led by Nyaga Gichuki. It is MFI-22. We further got record of payment by Mark and Bill Limited. It is MFI-23. There is a certificate of lease for Mark and Bill issued on 8.9.2016 is MFI-24. We wrote to the office of County Coordinator N.L.C. We got minutes for application for lease in favour of Sath Limited. Minutes are MFI-26. We extracted an application for transfer to Ollin Sacco. It is dated 30.1.2017 MFI-27. It is signed by 1st accused. We looked at Registry Index Map for Wang'uru. It is MFI-11. We saw building plans for Plot No. 160. It was done in 1979. We did not take measurement. We relied on the survey records. We were to determine the location of Plot Nos. 159 and 160. We came up with a report dated 6.6 2017. It is signed by J.M. Muthike. It is MFI-28. We found that the property had been allotted to Sath Limited. The property was transferred to Mark and Bill and later to Ollin Sacco. We established that in our records Plot No. 160 is owned by Purity Njambi - PW4. We established that Plot No. 159 in our record is leased to 3 tenants for 99 years. According to the allotment letter dated 1.4.1987 had different acreage from allotment letter to the one on the lease certificate. The letter of allotment had given 99 years w.e.f 1.4.1997 while lease certificate was leasing 1.7.1997. We noted that the letter of allotment did not indicate the use of the property. The allocation done to Sath Limited was irregular in that it gave out a developed property. At the time of writing our report DCI was investigating the ownership. We found the property being demolished. We observed that the owner of 159 had developed 160 while the owner of 160 had developed 159. The anomaly had not been regularised. The numbering as done by land commission was different from occupation. We recommended that DCIO be allowed to conclude investigations on ownership. Our report was tabled to the county assembly and adopted vide a letter dated 27.6.2017. It is marked MFI-29. The conclusion by county assembly was that Plot No. 160 be expunged from the record. [Witness referred to MFI- 11]. We established that 160 is a corner plot fronting tarmac. 159 is on the 2nd row. We established that 159 should be 160. This is according to approved building plans. Mistake was by state department of lands. I appeared before the county assembly in respect of their plot. We discussed ownership and occupation of Plot Nos. 159 and 160. Our report was adopted by the county assembly. In conclusion the numbering was not correct. The documentation for 160 ought to be for 159.”

19. On cross examination, he stated that, “I was involved in the investigations. [Witness referred to report]. Recommendation No. 13 asks that DCI be allowed to conclude investigations. The determination whether there was fraud has not been made. [Witness referred to report by county assembly MFI-28. It says that newly created Plot No. 160 be expunged. That owner of Plot No. 159 be transferred to Patrick Njiru. That was not our recommendation. I’m not aware that there was a matter pending before ELC. We went to the ground with a Mr. Kinuthia - surveyor. We compiled a report together. He did not sign the report. I’m a licensed land management surveyor. There are two lease certificates. For 160 it is issued to Sath Limited. For 159 it is issued to Gichuki and 2 others. The plots are different sizes. For Plot 160 it is 0.083 ha. Plot No. 159 is 0.0557 ha. The approved plan for Purity Njambi in 0.0557 ha. The letter of allotment from commissioner of land is dated 5.7.1997. It is in favour of Sath Construction Limited. It is a photocopy. It is not certified. I do not know which document was taken to Mr Mulu. DCI took away copies from us. [Witness referred to MFL-20]. It is signed by Mamwaka Mulu. I did not participate in verification of signatures. [Witness shown MFI- 21]. At the bottom right corner the plot number is interfered with. It is altered. I’m not aware of a beacon certificate done by County Government of Kirinyaga in favour of Sath Limited. [Witness shown a beacon certificate]. It is prepared by David Muchiri. He was our director of survey. I did not see a letter of allotment for Plot No. 160 in favour of Purity Njambi. I did not see a beacon certificate in favour of Purity Njambi. I have not seen a beacon certificate for Plot No. 159 being the corner plot. Plot No. 160 was surveyed in 1970s.



We did not need to do it afresh. The plots Nos. 157 and 160 are in a sequence. I obtained only one letter of allotment dated 5.7.1997. It was paid for by Sath Construction Limited. I got allotment letter dated 1.4.1997 from the coordinator National Land Commission. The two accused persons did not appear before the county assembly. On 30.6.2017 in my capacity as director of urban planning signed a consent of transfer made by Sath Limited. I am a Land Economist. I deal with Urban land valuation. I also deal with transfers. I started working with Kirinyaga County Government in 2015. I studied Law. I do not practice. I was assigned the work by CEC Muthike. This was in 2017. He is no longer in office. The current CEC is Daniel Kajombe. I was to investigate and come up with a report. Somebody had made a complaint to the County Assembly. It was in respect of rightful owners of plots at Wanguru town. I visited the grounds. The person who had complained was Patrick Njuru Kuria. There was an issue of location of Nos. 159 and 160. Ownership was an issue. The process of acquiring lease title involves ascertaining the location of the Plot. A survey is done by Director of Survey. I had a map-MFI 11 from the Director of Surveys. The map can be altered by the Director of surveys. Plot No. 160 is a corner plot. It borders Nairobi - Embu highway. It is slightly less than ¼ acre. 159 is immediately behind 160. It is on the second row. We found buildings on Plot No. 159. It is developed. We found demolition going on, on Plot No. 160. Plot No. 159 had been developed by a lady called Purity. I'm aware that demolition was finalized on Plot No. 160. The complainant Patrick Njiru, was not present when I visited. Ollin Sacco was represented by a surveyor. 1st and second accused were not represented. I did not know who was in possession before demolition. The documents from the County show Plot No. 160 as 159. The confusion is between the documents and occupation on the ground. Approved building plans bear different ownership numbers. It was drawn in 1979. The person drawing the building plan should have visited the ground. The green cards show ownership. The maps show occupation. A valid map should be approved, dated and signed by drawer. The current one does not have date and name of drawer. The time when this was drawn we did not require signatures. Purity's plot is 160. On the map from Director of surveys it is 159. According to our records Plot No. 160 is owned by Mercy Muriithi. There are several files in respect of 160. There is a file that shows Plot No. 160 was once owned by Sath Construction to mark holdings. We collected revenue for application for transfer. Before transfer documents of ownership he presented we got documents from National Land Commission. [witness shown allotment letter issued to Sath Construction Ltd.]. The letter is signed by F.M. Mamwaka. I know him. I'm not conversant with his signature. I cannot tell whether letter of allotment is genuine. It is the basis of the lease certificate to Sath Construction Ltd. There is a letter of allotment dated 1.4.2017 is not the basis of lease to Sath Construction Ltd. We got it from County Coordinator NLC. A claim was made that Plot No. 160 does not exist. Kshs. 16,000/= was paid by SATH. It was for transfer. We do not have sale agreement between Wairimu's husband and Geoffrey Kamau. [witness shown a plot register]. Plot No. 160 is registered under Sath Construction. It is a genuine document. We have updated register. I am not aware whether issue was referred by speaker to the Committee. I was not aware when Ollin Sacco instituted their case. We do not have the option of disagreeing with the County Assembly. We were suspicious of the documents. We found discrepancies in the letter of allotment. The County Government has not been joined to the case pending before ELC. Plots can be swapped if there is a mistake. Parties must be involved. There are two 160s. One in the County records and other the National Land Commission. I had an input on the response by CEC. We endorsed resolutions by County Assembly. The grant of lease is no conclusive on who is the rightful owner. We have not had a dispute on the ownership of Plot No. 160. I'm not aware of a later decision rescinding the resolution. I'm aware of letter by CEC asking N.L.C to cancel title.”

20. In re-examination, he stated that, “We did a report which was submitted. We were able to ascertain ownership. Plot No. 159 Wanguru is owned by six joint owners. They are Nyaga Njeri, Mugo Machau, Francis Gichohi, Benson Githinji and Ngari, Kamanga. This is per allocation of 1970 by Kirinyaga County Council on Plot No. 160. I have a record of rate payers. It has an alteration. There was



duplication involving Mark Holdings. We got an allotment letter dated 1.4.1997. It was forwarded by Grace Wairagu. We also got another date 5.7.1997. It allocated Plot No.160 to Sath Construction Ltd. From the remarks from N.L.C the file was opened in March 2016. The remarks are dated 10.3.2016. Allocation is given with conditions.”

21. In re-examination by counsel watching brief for the complainant, he stated that, “The lessor for Plot 159 and 160 is Kirinyaga County Government. It is the County Government that has the records relating to the two parcels. When we visited the site demolition was on the plot adjoining the high way. Next to the plot was a building that was not demolished. I know that the building that was demolished had a club called Pine Breeze. According to the development plan Plot No. 160 was developed by the six owners. I had mentioned above. They are the ones who sought to transfer to Patrick Njiru. According to drawings from Survey of Kenya Plot No. 160 is the one touching the one touching the tarmac. Plot No. 159 is next to it. It does not front the highway. Plot No. 159 is developed by Purity Muriithi and Mercy Wairimu Muriithi. It is not in order to allocate a plot which is developed by another party. According to survey of Kenya Plot No. 160 fronts the highway. County records refer to the same property is 159.”
22. PW6 Jane Wanui Wanyaga testified that, “I’m a farmer. My husband died. He was James Nyaga Gichuki. He had a plot in Mwea. I cannot remember the number of the plot. It was jointly owned by six people. They were Francis Gichuki, Ngari Kamanga, Njeri Macau, Mugo Macau, Elizabeth Warui. The owners had leased out the plot. They leased out to one Laban and then Kennedy. Kanga was the 3rd person to lease the plot. In 2013 they decided to sell. Kanga was called. Kanga offered to buy at Kshs. 8 million. 10 million was also offered. We had the agreement reduced in writing. I was present. I cannot remember the date. We did not agree with Kanga. Later we got Patrick Njiru Kuria. He was to pay Kshs. 14 million. Our sons were involved in the agreement. Later got to learn that the first accused was claiming the land. The land was in our name from the 1970s.”
23. On cross examination, she stated that, “The plot belonged to six people. The owners were related. It was Plot No. 159. The owners occupied the plot for sometime. I cannot remember when they occupied the plot. I was not living on the plot at any time. I know the boundaries of the plot. There are beacons and boundary features. The plot has a stone fence surrounding it. The fence was intact last year. It was erected by Laban. I heard that the property was demolished. Our meeting at Kiamugutu was reduced into writing [witness referred to minutes of a meeting]. We were selling Plot No. 159. It had at one time a case at Wang’uru Law Courts. I can show it’s dimensions if we visited. Cannot tell whether it’s 1/8 or 1/4 acre. I have seen maps of the area. My husband's plot was No. 159. Plot No. 160 is different. Plot No. 160 belongs to Purity. Plot No. 159 is on the tarmac. My husband had two wives. The first wife died.”
24. PW7 David Mburu Nyaga testified that, “I’m a Businessman. I know PW5. She is my mother. I know about Plot No. 160 Wang’uru. It was ours. We got it around 1971. Was in the names of James Nyaga, Francis Gacheru, Njeru Macau, Ngari Kamanga, Mugo Macau and Elizabeth Warui. James Nyaga is my father. The others are my uncles. My father died in 1999. In the papers our plot is 159. On the ground it is 160. The person who occupies 150 has documents for 160. On the ground we leased out to the 1st accused. Our plot has a perimeter wall, butchery and office. We had a lease agreement. The first was 2008. The last agreement was to lapse in 2013 [witness referred to MFI]. I signed the agreement. We decided to sell the plot in 2013. We offered to sell to 1st accused. He wanted to pay Kshs. 8 million. He then raised his offer to Ksh. 10 million. He failed to pay. Letter dated 17.12.2012 is marked MFI [31] letter dated 19.1.2013 is MFI [32]. We decided to sell to PW1. We told him that we were selling on condition that he will not evict the existing tenant. The portion measuring 5/6 was sold for 9 million. The other 1/6 was sold for 5 million. The agreement is MFI 4. The plot fronts the tarmac [witness referred to copy of the lease]. It is MFI 1. The plot belongs to Patrick Njiru.”



25. On cross examination, he stated that, “I was born in 1978. There was an application letter for the plot. I have not seen it. I saw a beacon certificate for 159. My father had four wives. Joseph Mburu Nyaga was the Administrator. The Administrator did not sign the sale agreement. The plot was allotted to six people. The lease certificate had three names. In the Wang’uru case I was the 1st defendant. The court said that plot was owned by three people. The plot is ¼ of an acre. In front the road. We did not defraud people. We lease out Plot No. 159. The 1st accused got into the plot in 2007. I’m not aware of an agreement dated 2005 [witness shown an agreement dated 18.10.2005]. It is in respect of Plot No. 160. Our plot is 159. It was corrected in subsequent agreement. They were referring to the same site. There was confusion on the ground. The 1st accused was paying rent regularly. He had paid in advance. Kshs. 704,000/= . Plot No. 159 is adjacent to 160. [witness referred to MFI 11]. It shows that 160 is the one that fronts the road. The plot behind it is 159. They occupy different grounds. I know that a certificate of lease was issued recently [witness shown a beacon certificate]. Its dated 5.11.2015. It is issued by County Government of Kirinyaga. We did not defraud PW1. Plot No. 160 is 1/8 acre. We sold Plot No. 159. We went to the County Council to exchange the plots. The application with the prosecution. There was a resolution by the Council.”
26. In re-examination, he stated that, “Plot No. 159 belongs to the family. It is 100 x 100. My father was the allottee. There is a beacon certificate for 159. An application was done at Kirinyaga County offices. We did not defraud the complainant.”
27. PW8 C.I. Susan Wambugu testified that, “I’m a Forensic document examiner. I have 9 years experience working with DCI. I hold BSC and I trained at Khartoum, Sudan, Lyon France, Gujarat in India and Forensic Criminal Laboratoes in Guanzon, China. On 24.7.2018, I received exhibits from DCI Mwea East. They were escorted by PC Kennedy Okoth. They were marked as A [i] & [ii] - the questioned documents. A. [i] - Letter of allotment for Plot No. 160 Wangururu Township dated 5.7.1997. A [ii] - Letter of allotment for Plot No. 160 dated 30.7.1997. Documents A [ii] and [ii] contained no signatures for Francis M. Mulu. We had document marked B. It contained specimen signatures by Francis Mulu. We were to ascertain whether the signatures on A [i] & [ii] arrowed in blue were made by the same author when compared with known signatures of Francis Mulu. I did the forensic analysis. I found as follows: [i] On exhibit marked A [i] & [ii] when I compared the signatures with the specimen signature I formed the opinion that the signatures were made by different authors. I wish to state that I use video spectral comparator machine 6000. It is a medium that magnifies the signatures. I also consider signatures initial and terminal strokes, baseline alignment, spacing and pen lift. I prepared a report on 24.7.2020. The exhibits were referred to DCI, Mwea for safe custody. The report is exhibit No. 33. On 26.9.2017 we received exhibits accompanied with exhibit memo. They were brought by Sgt. Chirchir. They were as follows: Exhibit marked 'A' a copy of letter of allotment marked 1.4.1997. It was the document in question. Exhibit marked A1 was from County Government of Kitui concerning known signature of Francis Mulu. Exhibit A [ii] were specimen signatures of Francis Mulu. In my opinion the signatures were made by different authors. I made the consideration using USC 6000 machine, I signed the report on 3.10.2017. I wish to clarify that the documents in 2017 was one of the documents I examined later. The report dated 24.7.2020 is consolidation of examination of initial document dated 1.4.1997 and documents supplied later. Document marked [A] in the report dated 3.10.2017 and the one marked A [i] in the report dated 24.7.2020 is the same. It is dated 5.7.1997. The report and exhibits were returned to DCI Mwea East. The report is exhibit No. 34.”
28. On cross examination, she stated that, “I have no personal interest in this case. I received the exhibit Memo on 24.7.2020. I’m not aware that the case was ongoing. I and prepared another report in respect to this case. In that report I had receipt exhibits in September, 2017. The documents were from the same station. The documents is for September, 2017 were forwarded by Sgt. Chirchir. The



document is dated 205.7.1997. [witness referred to exhibit memo]. It was dated 1.4.1997. Exhibit No.33 the report is dated 24.7.2020. I got additional document. It was for comparison. The added document is dated 5.7.1997. I compared the document with known and specimen signatures of Francis Mulu. The document was photocopy. We can use original certified or photocopies. The photocopy not certified. It is possible to manipulate a photocopy. The Investigating officer informed the office that the original document could not be found. This was Sgt. Chirchir. The known signature is an original document signed by Francis Mulu. It was signed in Kitui. It is a letter dated 16.5.2017. I did not compare signatures. They are not disputed. I did not compare known signatures with specimen signatures for report. I compare for consistency. I used a photocopy of the letter dated 5.7.1997. If a document is clear I can get accurate report. I would have preferred using original documents. There will be no difference in the result so long as the signature is clear. The letter of allotment dated 5.7.1997 was not signed by Francis Mulu. It was forged. I considered the characteristics of the signature under magnification. VSC 6000 is a scientific machine. I'm not lying. I have no interest in the matter. In my expert opinion the document is forged. I'm telling truth. I have been working for 10 years. I made the 1st report on 20.10.2017. I received an exhibit memo. It was received under escort of Sgt. Chirchir. I'm the one who received the document. It was on 26.9.2017. I saw the officer. We have an OB where the documents received are recorded. I was to ascertain whether the signature shown in blue and the one marked in red were by the same hand. The questioned document was the exhibit marked "A". It is a letter of allotment. According to the exhibit memo the suspect was Francis Mamwaka Mulu. I compared the known signatures and sample signatures of Mamwaka Mulu. I examined him. He was not the one signed the documents. The machine magnifies the handwriting. It is called VSC 6000. It was bought in 2019. It is serviced every 3 months. It does not give results. It aids me to make a decision. It is scientific. It is 99.99%. The service schedule is with the procurement section. For the second examination the exhibit memo was brought by PC Kennedy Oku, It was by an 24.7.2020. The exhibit was received by Cpl. Martin Kitaye. It was then allocated to me. I was to ascertain whether the signatures on exhibit marked A2 from [i] to [ii] - copies of allotment letters. We use photocopies. The documents were clear. There is no difference whether the document is original or copy. The signature in question is legible. The questioned signature was by John Baptista Kanga. I'm not aware whether the matter had progressed. Documents are assigned to us by the officer in charge. There is no problem even if the case is ongoing. The questioned signature was by Francis Mamwaka Mulu. I compared it with Mamwaka's known and sample signatures. In my opinion they were made by different hands. It is not possible to arrive at a different opinion using the same methodology. There is no contradiction in my two reports. I have done several reports in a single case before. For the 2nd report I used a machine procured in 2019. We are 20 in number. We have experts and trainees. I knew Emmanuel Kenga. He was a document examiner with the police. I am conversant with his signature. I have heard of Martin E. Papa. I have not interacted with his signatures. I did my examination professionally. The second exhibit was brought by PC Okul. I did not receive it. It do not know how many times it had been photocopies. I do not know the type of machine used to copy it. I was to ascertain whether the signatures were made by the same hand. Handwriting is in the brain. It is not in the hand. The magnifying machine gives an image. I do not have the images in court. I have put in a summary. I did not make a print out from the machine. [witness shown a report]. It is by Emmanuel Kenga. He is in private practice. The document is dated 24.8.2021. It is prepared by Emmanuel Kenga. His opinion is that the signatures are from the same author. The document marked A is a letter of allotment dated 5.7.1997. B is a photocopy of specimen signatures. C is a letter dated 14.7.2017 it is allegedly signed by Francis M. Mulu. C is a letter dated 16.5.2017 allegedly signed by Francis Mulu. I used specimen signatures of Francis Mulu. In the opinion of Mr. Kenga the signatures are similar. [Witness referred to a report]. It is dated 25.8.2021. It is indicated as prepared by Martin T. Papa. He is a forensic examiner. I do not know Papa. I do not know whether he is a qualified examiner. He says that the signatures are similar and consistent with



- standard signatures. Q is a letter of allotment for allotment dated 5.7.1997. He used the original. A is the Ministry of Land internal Memo bearing the signature of Mr. Mulu dated 16.5.2017. The memo was in original form. A2 is a Memo dated 14.7.2017. It is a photocopy. B are sample signatures of Francis Mulu Mamwaka. The report has illustrations of the magnified signature. I cannot comment on the opinion of the experts. I have not seen the documents used or seen by them.”
29. In re-examination, she stated that, “I usually get the disputed document, known document and specimen document for comparison. In this case I had all three. It is a standard requirement. I used a photocopy of allotment letter. We used photocopies of the original as with the adverse party or if the document cannot be found. If the signatures were not clear, I would have written a report to that effect. My report clearly indicates the equipment used. The report by Mr. Kenga has not indicated what requirement used apart from magnifying glasses. I know Mr. Kenga. He was a police officer. He was a document examiner. He left the document examination section in 2011. In 2012 he was removed by the commission. He is now in private practice. I have not worked with him. I have not peer reviewed his documents. I do not know Martin Papa. I know all the document examiners in Public service. They are 25. We are all based at DCI National Forensic Lab. The machines are only found in our Lab. EACC CBK and KRA have similar machines. I have been in service for ten years. I use both equipment and skills. In Forensic science the accuracy is 99%. My opinion is as a result of the factors considered and documented in my report.”
30. PW9 Peter Githinji Muriuki testified that, “I’m a farmer. My father was Muriuki Githinji. Together with others they were allotted Plot No.159/160 at Wang’uru. At the ground they occupy 160. In the papers it is referred to as 159. It fronts the road. My father and other allottees are deceased. We took over the land. We had certificate of lease. It is MFI1. We leased the land to Laban Mugo in 1997. The initial lease was for two years. We renewed the lease upto 2004. The renewal of agreement dated 16.7.2003. It’s MFI 35. In 2004 we leased the plot to Kennedy Murimi. We entered into a lease agreement dated 10.1.2004. It was for two years. It’s MFI 36. In 2005 we leased the land to Baptista Kanga. The rent was Kshs.12,000/= per month. The lease was from 2006 to 2011. We renewed his lease from 2011. The tenancy agreement dated 7.2.2011. It is MFI 3. In 2013 we decided to sell the plot. We gave the 1st accused the offer to buy. He gave us an offer. He wrote two letters. In one he was offering 10 million. The letter dated 19.1.2013 is MFI 3. We got a different buyer. It was Patrick Njiru. He paid to us Kshs. 14 million. We sold the land. At that time the 1st accused was still on the plot. At the end of the lease he refused to vacate. He sued us. He was ordered to leave. He asked for six months to move out. Later we got to learn that he was claiming the land. We conducted a search. It is in court. It is MFI 38. At one time the 1st accused gave me Kshs. 50,000/= . It was for purposes of a succession cause. He wrote a letter dated 4.2013. It is MFI 37. In the initial agreements we wrote Plot No. 159. When we went to the Council officers we confirmed that our plot 160. We were called to Council offices by the offices together with owners of Plot No. 159.”
31. On cross examination, he stated that, “I do have the plot application form. I have a beacon certificate. I remember a civil case in Wang’uru where I was a defendant. In the court papers it was referred to as Plot No.159. In the lease certificate three people were listed. I do not know what the court decided [witness referred to the judgment]. The court said that 3 people appeared on the lease [witness referred to lease certificate]. It does not say that land is held in trust. The plot is ¼ of an acre. I do not know the size on the lease certificate. We owned a plot. At Wang’uru court the plot is described as 159. [witness referred to his statement]. Our plot is 160. No plot is referred as 159/160. We sold the plot to Patrick Njiru. I visited the plot when the court was at the scene. We were leasing on the plot that was demolished. The neighbouring plot belongs to Purity Njambi. The first time we leased the property to Kanga was 2006. [witness referred to lease agreement dated 16.7.2006]. It does not describe the plot. No plot number given. The agreement dated 10.1.2004 does not name the plot. The one to the 1st accused shows that



the plot was 160. It was lapsing in 2010. We renewed in 2011. In the agreement for renewal the plot is described as 159 Wanguru. Plot No.160 is next to the road. 159 is behind it. The one on the road is bigger. I do not know about Ollin Sacco. I do not know whether they own Plot No. 160. The beacon certificate I have for 159. We sold Plot No. 160 on the ground.”

32. PW10 CIP Steve Kibagendi testified that, “I’m based at Laikipia East. I’m the DCIO. Previously I was based at Mwea Sub-County as Deputy DCIO. I left Mwea in 2018. I was the Chief Investigator in this case. I had an assisting investigator namely Sgt. Chirchir and Sgt. Wanjiru. They are now Inspectors. There was also PC Wambura. The case was reported on 15.5.2015. The complainant came and reported that somebody had defrauded him of his land. He mentioned that he had bought a plot. He had some documents. One of the documents was a map. It shows Plot No. 159. He had a certificate of lease. It was reading the names of the people he had bought 159 from. The certificate read Nyaga Gachuki, Njeru Makau and Francis Gichuki were the registered owners. The certificate of lease is dated 16.5.1980. He had a map of the plot showing that 159 was next to the road. He had a sale agreement dated 5.6.2013. It’s MFI 2. It had thumb prints. There was another sale agreement between Gacheri Gichuki and Patrick Njiru. It is dated 15.12.2015. It’s MFI 4. Attached to it was bank transfer form for Kshs. 5 million. The first agreement was for five family members. The second was for the sixth family members. I recorded a statement from the complainant. He said that he bought the land from the six members of the families. The information he gave us was that the property had been changed at Kirinyaga County offices. His complaint was that someone who had leased his property had now claimed that the property was his. He gave the name of the first accused as the one who was claiming the land. The complainant claimed that Mr. Kenga had written claiming the land. I asked the complainant to bring the people who had sold him the land to record statements. A lady called Purity came with documents showing that she had a plot at the same venue. She recorded a statement. The documents are payment receipts for rates for Plot. no. 160. Some of the receipts are for Paul Kangangi her husband. Purity had a development map for the plot. It was approved on 20.8.1992. She had minutes by County Council of Kirinyaga held on 30.3.2007. The Council added the name of her son as owner of the plot. She had minutes from her husband to her name. She had a certificate of [MFI 16] showing that the property had moved from her late husband to Purity Muriithi. A letter from County Council. It was giving authority to construct Plot No. 160. The last was transfer of plot letter dated 26.7.1987. On recording the statements of Purity Njambi and the complainant I realised that there was a conflict in numbering. I wanted to know who was real owner of which plot. I engaged the County Surveyor. I wrote a letter dated 24.5.2017. I wanted the Surveyor to come and identify the plots. I’m the Investigating officer in this case. I started investigating this matter while at Mwea. I wrote several letters. On 19.5.2017 I wrote to the County Secretary Kirinyaga and Land Registrar, Kerugoya. The letter dated 19.5.2017 the County Secretary. It was about Plot No. Wanguru Plot No. 160. I was asking for details on ownership, search and minutes. The one to Land Registrar wanted to get certified copy of green card as it is in their files. I wanted any documents used for transfer. It is MFI 39. On 24.5.2017 I wrote to County Surveyor in regard to Plot No.159/160Wanguru. It is the DCIO who wrote on my behalf. We wanted to meet with Surveyor on the ground. The letter is MF 40. The next letter was on 16.6.2017 addressed to commissioner of lands, Nairobi. We were asking for letter of allotment. It is MFI 41. It was referring to an attached document. The last letter is dated 22.6.2017. It was addressed to post master general Njaro. We wanted to know the names and address of addressee. It is MFI 42. On the first letter I got a copy of search showing the registered owner. I also got minutes of transfer. From the and registered I was given a green card showing ownership [witness referred to green cards]. I got them from the lands office. They indicated the families that owned the land. It was issued for the first time in 1979. The complainant had given me agreements he had signed with the owners. I wish to confirm that I met Kinuthia - Surveyor. We went to Wanguru trading centre. The surveyor clarified that Plot No.159 was fronting the main highway. Plot No.160 was behind it. It belonged to one Purity. The



first accused was present, officials from County Surveyors office were also present. At Kerugoya lands office I saw documents in respect of Plot No. 160. There was a document dated 1.4.1997. It is signed by F.M. MAMWAKA. I got a reply from Commissioner. I got the signatory the said Mamwaka. He gave us specimen signatures. We got his known signatures. I forwarded them to the document examiner. I cannot remember who took them [witness shown exhibit memo]. It was by Sgt. Chirchir. The result from the document examiner indicated that Mamwaka is not the one who signed the allotment letter. We had address of directors of SETH COMPANY. The address given was Box 73, Njoro. MFI 43 is a letter from Registrar General. We got information that SAMSON THEURI was the one involved with Seth Construction Company. I recorded his statement at RONGAI. Theuri claimed to own the contested plot. I was able to compile the file with all documents. We placed it before ODPP. It was recommended that the two be charged with the offence of forgery. The signature in the allotment letter of 1.4.1997 was forged. On the allotment letter dated 5.7.1997 it was given to the officer who had the case. It has a signature of Mamwaka. It was forwarded for examination. The plot in dispute is next to the main road. It is in dispute. Purity Njambi came to my office. She showed me her documents, I saw the County Council receipts. I knew the 1st accused. He was an MCA. He used to run a police canteen. He had leased Plot No. 159 from original owners. He had a butchery and hotel on the plot. He was a party in tribunal case No.125/215 Embu. The Tribunal stated that the respondent Francis Gacheni was no longer the land lord. It is MFI 5. After that the 1st accused claimed to be the owner. He produced an allotment letter which was not authentic. The minutes from the local authority were forged. They back dated documents. He got land transferred to himself. I did not get any evidence that he had paid for the plot. The second accused is connected to the case through Sath Construction Company . He claimed to own the land. I have a registration certificate for Mark & Bill. It is MFI 4. The directors are Lucy wambui, Cecilia Wangechi, Baptista Kanga and Wanjala Security. The owner of Plot No. 159 is the six families indicated in the title deed. It is now owned by the complainant. The plot is not currently occupied. I got information that the first accused had sold the land to a company [witness shown greed card]. It shows that current owner is OLIN SACCO. It shows that certificate of lease was issued in 2017. The green card for parcel No. 160 is MFI 45. We were not able to take finger prints of the finger prints I was not present when 2nd accused was arrested. The second accused person was part of the fraud. His company was used to transact in the land. He had a company called Sath Construction Company . They appear in the green card. This is in respect to Plot No. 160 Wang’uru.”

33. On cross examination, he stated that, “The complainant came to my office on 15.5.2017. He complained that he had bought a plot at Wang’uru. That the 1st accused was claiming the same land. The dispute was about ownership and occupation. There were other investigators. I was told about the ELC case. PW1 told me that the matter had been finalized. The plot next to the road was 159 [witness referred to exhibit No. 23]. The registered owners are three. It had a case at BPRT [witness referred to exhibit No. 45]. It is indicated that as at July 2016 the owner was Sath Construction. On 8.9.2016 Mark and Bill Holdings Limited. The current owner is OLLIN SACCO. It is forged. The people/ companies appearing on the document forged it. Initially the complainant was talking about 160. On the ground it was 159. Plot No. 160 on the ground belongs to Purity. Plot No. 159 is on the main road. There is a certificate of lease for 159. 159 is bigger than 160. It is next to the road. The documents for 159 are not in his name. Agreement dated 5.6.2013. It is exhibit No. 2. It refers to Plot No.159. We visited the site with a Surveyor. They had maps. As per exhibit No. 11 Plot No. 160 is the one that borders the road. It is a corner plot. 159 is immediately behind it. 160 is bigger than 159. The surveyors confirmed that 159 is the one on the road. Purity was the owner of Plot No. 160. She did not sell any plot to the complainant herein. [witness referred to exhibit No. 21]. It shows the owner as Purity. It’s a plot register. The plot is indicated at the bottom as 160. [Counsel thinks the plot number is altered]. [witness referred to exhibit no. 24]. The owner is Mark & Bill holdings Ltd. 1st accused is a director of Mark and Bill holdings Ltd. It is Plot No. 160. The exhibit for 1st accused came later. The accused



persons fabricated their documents. In the course of investigations I saw the letter of allotment dated 1.4.1997. It is exhibit No. 9. Mr. Mamwaka said that the signature was not his. It was forged. It used to give the accused persons a lease. I did not deal with another lease. I do not know whether exhibit No. 9 was used to prepare lease for 2nd accused persons company. I cannot remember where I got exhibit No. 9. I did not get it from either of the accused persons. I cannot tell how the second letter of allotment was obtained. I cannot tell whether it is genuine or not. It was subjected to examination. I did not get originals of exhibit No. 9. [witness referred to a letter dated 6.6.2017]. It is exhibit no .28. The plots have different files with the commissioner for lands. I did not peruse the files. [witness referred to statement by Stephen Wambugu]. In paragraph 2 he states Plot No. 160 is on the road. He has indicated the measurements. The County Assembly was involved in the dispute. I'm aware of complaint made by the complainant to the assembly. I did not get the report of subdivision. [witness referred to exhibit no. 26]. The first accused influenced the members of committee. I'm not aware of any complaint by the complainant to the executive arm of the government. The letter of allotment dated 5.7.1997 is said to be signed by Mamwaka. It has comments on the margin. It says certified copy of the original. I only went to lands office for my investigations. [witness referred to a receipt for issuing fees in respect of 2nd accused]. My evidence is that plot 160 is the second plot. 1159 is the one adjoining the road. Plot No. 160 belongs to Purity [witness shown a receipt dated 25.4.2016]. It is DMF113]. A letter dated 17.6.2016 by Chief Land Registrar. Lease certificate for SATH is MFI 14. Letter dated 2.8.2016 is MFI 15. All the documents you have shown me were processed by the accused persons. The plot in question is No. 159. The 1st accused refused taking statements. He refused taking of fingerprints. [witness referred to 2nd accused person's witness statement]. It is dated 19.6.2017. It is MFI 17. The 2nd accused did not give me copies of the documents. I concluded that they were forged. I'm not aware of the decision of the County assembly in respect of the dispute herein. In the first count I'm referred to the letter of allotment dated 1.4.1997 was not investigated by myself. The signature on allotment dated 1.4.1997 is forged. The letter came from Athi House. I cannot tell who signed the letter. The document examiner did not say that it was the accused persons. In count No.2, I meant that the signature was changed. Under Count IV they falsely presented a certificate that was not genuine. I talked to the Land Registrar Kirinyaga. I did not ask about the genuineness of the certificate of lease. I cannot link the accused persons to typing of the letters. No direct evidence linking two accused persons with signing the documents. The Land Registrar acted as part of his job. This is a criminal case [witness referred to exhibit No. 21]. At the bottom right corner there is overwriting..... I was satisfied with ownership upon visiting the site. I did not that anybody as suspect. The land was sold to Njiru by a family of six. The green card shows that the land was owned by three people. Entry No. 3 is temporary injunction. No change of ownership since then. The 3 families have not complained. I did not treat the members of the family as suspects. I got to know that they had leased the property. They received money from PW1. I only investigated the letter of allotment dated 1.4.1997. The letter did not emanate from the two accused persons. I did not interview Grace Wairagu. I did not investigate the letter dated 5.7.1997. I knew Kennedy Okul. He has not recorded statements. On Count 1 it does not show the dates of the documents. I do not have a report implicating the two accused persons forging documents. On court No. 2 no date of document indicated. On count IV and VI the certificate of lease was issued to Sath Construction on 8.7.2016. Both transfers were wrong. Under count V two allotment letters were made.”

34. In re-examination, he stated that, “The complainant was on 15.5.2017. ELC was filed on 5.6.2017. The Surveyor is the expert on the plots. He is the one who can tell which is Plot No. 150 or 160. Purity owns the plot off the road. The plot where first accused had a business is the one next to the road. [Witness refers to exhibit no. 1]. It is for exhibit No. 159. From the map Plot No. 160 is the one on the road. Exhibits No. 8 is dated 18.7.1979. It's for Plot No. 159. Purity presented her documents of ownership. I do not know who altered exhibit No. 21. The transactions were affected by allotment



- letter. The accused persons did not give me any documents. The two allotment letters are captured in the charge sheet. The accused person's companies are linked to the accused persons. We got to know about the confusion when the investigation started. When Surveyors got to the ground they said that 159 was on the road.”
35. DW1 John Baptista Kanga, the 2nd appellant herein, testified that, “I’m a businessman. I’m aware of the charges facing me. My plot is No. 160 in Wang’uru town. I was a tenant in the plot. My landlords leased it as Plot No.159. I knew the previous tenants. When they were not able to continue I was called to buy off their business in 2004. When I became a tenant there was one building at the corner. There was a counter. I was in the premises for 10 years. I had erected buildings. In 2015 a Mr. Theuri, is 2nd accused visited the premises. He found my Manager. He claimed that the plot was his. He claimed it to be Plot No. 160. I met him. I told him that I was tenant on the plot as Plot No. 159. He gave me a notice. He wanted to demolish the buildings. I talked to him about selling the plot to me. I demanded to see his title documents. In 2016 he showed me his lease title. I bought the land from him [witness shown exhibit No. 45]. Entry No. 1 is for Sath Construction Ltd. It shows certificate of lease issued. Entry No. 3 is a 8.9.2016 in Mark and Bill Holding Limited. I am aware of a civil suit on the same property. It is ELC No. 33/2021. The Plaintiff is Patrick Njru. The 1st defendant is myself. The 2nd defendant is Mark and Bill holding Ltd. 3rd defendant is OLLIN Sacco. 4th Defendant is County Government of Kirinyaga. Todate the matter is still pending. The Plaint in ELC No. 33 of 2021 is D. exhibit No. 1. [witness referred to exhibit No. 9]. I am aware of this document. I have seen it here in court for the first time [witness referred to exhibit No. 20]. It is a letter of allotment. I got to see it in 2015. I got it from the 2nd accused person. It was issued to Sath Construction Ltd. In 1997 I had not transacted on this land. The signature at the foot of the exhibit No. 20 is not mine. My specimen signatures were not obtained. I did not forge the document. In 1997 I was living in United Kingdom. [witness referred to P. exhibit No. 45. There is no entry of 8.9.2018. The last entry is for February, 2017. I was able to procure services of a document examiner. He made a report dated 23.8.2021. It is MFI 2.”
36. On cross examination, he stated that, “I’m a Businessman. I was MCA Wamumu Ward from 2017-2022. In the Assembly, I was Chairman of Agriculture Committee and Ad hoc Committee on Covid. I sat in several Committees. They include Gender, Lands, Physical Planning and Health Committee. I was a tenant of parcel Number 159. It is the same plot of land the complainant is claiming. I improved the land. It was according to the tenancy agreement. The landlords were led by Francis Gacheni. I heard that Gacheni sold the plot to the complainant herein. My tenancy was extended in 2015 for another five years. I was to vacate around 2020. I bought Plot No. 160. Initially, I was meant to believe that it was Plot No. 150. I was given a certificate of lease for 159 by Francis Gacheni. The second accused showed me a copy of certificate of lease for 160. The Director of SATH is Mr. Theuri 2nd accused. The complainant is the one who sued me. There is no stay of proceedings. I did not record a statement with DCI. When I was arrested my finger prints were taken. In 1997 I finished my Masters degree. In April 1997 I traveled to UK. I do not have my passport. In the County Assembly the Chairman of Lands Committee was Simon Waititu. [witness referred to exhibit No. 26]. I am aware of the minutes. It was a meeting held on 29.1.2016. I sat as Chairman of Kirinyaga County Land Management Board. Agenda 10 was application of lease title at Plot No. 160 Wang’uru. It was approved. The minutes do not indicate the applicant. It was by Sath Construction Ltd. I am not aware of an error of the two plots. I sold my interests in Plot No. 160.”
37. In re-examination, he stated that, “The meeting in exhibit No. 26 is not an issue in the charges. The second accused showed me a letter of allotment. I was not shown any document in respect of Plot 159 by my landlords. I do not know of any error on where the two plots stand on the ground. Plot No. 160 is the one facing the frontage. Plot No. 159 is 1/8. They are not of the same shape.”



38. DW2 Samson Theuri Muchiri testified that, “I’m aware of Sath Construction Company . I am one of the directors. The other directors are Erastus Muchiri [deceased] and Edward Wannee Muchiri [deceased]. The Company owned a plot at Wang’uru. It was 160 Wang’uru. I was issued with a Letter of allotment. I have the original. It is D. exhibit No. 3. In 2015 I visited Wang’uru town. I found some activity on the plot. I met a man who said that he was working for John Kanga. I told him that I owned the plot. I left my number with the Manager. We had a discussion with 1st accused. He was offering to buy the plot. We agreed that I get certificate of lease. The plot is the front one. It faces Nairobi - Embu road. It is about $\frac{1}{4}$ acre. I got the lease in July 2016. I obtained beacon certificate from the County Government of Kirinyaga. Overleaf it identifies the plot on the ground. It is shaded. It is exhibit No. 4. [witness referred to exhibit No. 9]. I have not seen this document until we were charged. According to R.I.M the plot is the first facing the road. The allegation of forgery is false. The lease certificate was issued by Ministry of Lands, Nairobi. I was not asked to provide specimen signatures. I’m not asked to provide specimen signatures. I’m not the one who signed exhibit No. 9. I did not utter it. The document was issued to me by Lands office. The owners as of 1980 were Nyaga Gachoki, Njeri Macau, Francis Gacheni. That is for Plot No. 159. The last entry is decree of permanent injunction - [PM] Wang’uru. It has never been transferred to any person. I’m aware that an earlier report of the County Assembly was rescinded. The document is dated 30.7.2020. The document is marked DMF1 5. My certificate of lease was subjected to forensic examination. The lease issued to Sath Construction is not challenged. The lease was issued to SATH on 1.7.2016. It was transferred on 8.9.2016 to MARK and BILL. I complied with all the requirements before transfer. Nobody came to court from Lands office to challenge my certificate of lease. There is no entry for 2018. I did not make the document of 5.7.1997. It was issued by Ministry of lands.”
39. On cross examination, he stated that, “Exhibit No. 3 was issued to Sath Construction. My father picked it. I do not have the specific date. My father passed on in 2001. I presented documents to Kirinyaga County Land Management Board in 2015. The letter of allotment is one of the documents I presented in 2015. Beacon certificate was one of them. In 2015 I found a bar and restaurant running on the plot. I was informed that documents were erected by Mr. Kanga. We are not the ones who leased land to 1st accused. He was unlawfully on our land. I had not visited the land before 2015. My brother passed on in 2019. We were allocated land. This was in 1997. I did not meet the people who had leased land to 1st accused [witness referred to exhibit No. 20]. I wrote a letter to lands in 2016 [witness referred to D. exhibit No. 3]. It says that offer of allotment lapses within 30 days if no action is taken. I have not produced receipts’ for rates. I recorded a statement with the police. The beacon certificate was issued to me. Plot No. 160 is the one next to the road.”
40. In re-examination, he stated that, “When I applied for lease it was acted upon and issued. No letter of request issued. There is no issue with payment of rates. I saw white cards for the two plots. Plot 159 is $\frac{1}{8}$ acre. Plot 160 is $\frac{1}{4}$ acre. There was no need to report to police. I was talking to the 1st accused.”
41. DW3 Martin Esakina Papa, a Private document Examiner, testified that, “I am trained in Forensic and document examination. I have 24 years experience. I have given evidence in courts in Kenya and Tanzania. I have also done reports that have ended up to the Supreme Court of Kenya. I’m a retired Chief Inspector of Police. A certificate of service is exhibit No. 6. I’m a Director of Special Forensic Services. I have a certificate of registration. It is exhibit No. 7. I have certificate of Forensic examination. It is marked exhibit No. 8. I recall on 23.8.2021 I received a request from Maina Kagio and Comn Limited to examine several documents. I was supplied with the following documents: a]. Letter of allotment for Plot No. 160 Wang’uru township dated 5.7.1997 in original state. It is marked P. 1. b]. Letter of allotment for Plot No. 160 Wang’uru town dated 1.4.1997. It was a photocopy. I marked it Q2. c]. Ministry of lands infrastructure and urban development internal Memo being the signature of



Francis Mulu dated 16.5.2017. It was original. It is marked-A1. d]. Ministry of Lands infrastructure and urban development Internal Memo being signature of Francis Mulu dated 14.7.2017. It is a photocopy marked it A2. e]. Request sample signatures of Francis Mulu Mamwaka in photocopy state. I marked it B1. I was to ascertain whether signature in the documents marked Q1 to Q2 bore similarities with A1, A2 and B1. I examined the signature on exhibit Q1 against AI A2 and B1. My conclusion is that they displayed characteristics that were consistent and similar with A1, A2 and B1. I prepared a chart. That shows the similarities. I formed the opinion that they share common origin. I examined Q2 with A1, A2 and B1. I could not find an agreement between them. I prepared an illustration. I further examined Q1 and Q2. In my view, I could not find similarities. In my view they do not share common origin. My opinion is captured on page 7 of my report. I have compared the signatures strokes. The characters are compared side by side to check consistency in terms of spacing, spread, pen pressure. In my examination I used scanners, magnifying glass and microscope. My report is dated 25.7.2021. I signed it. It is produced as exhibit No. 2. There are dangers of using a photocopy when examining. It may lose clarity. It can still be used. One has to comply with Section 68 & 69 of *Evidence Act*. Age of the write is key in documents. Age affects the handwriting. If sample writing are taken 20 years after signing a document the handwriting will have changed. Mental status is a factor. If in distress one may not write in the same way. I have not worked with Susan Wambugu who testified for prosecution. There is a difference between a disguised and forged signature. In a disguised signature one tries to hide his handwriting while signing. It is done by the same person. A forged signature where another person attempts to imitate the signature or another. The two can be detected during forensic examination. I cannot on my own tell whether there is forgery in any document. I leave it to court.”

42. On cross examination, he stated that, “I retired in 2004 as a Chief Inspector of police. I worked as a document examiner. I served for 7 years as a document examiner. I never testified in court as a document examiner. In the government we were using magnifying glass, microscope a plectina VSC 1000 vide spectral comparator]. Electro-static document analyser. VSC 6000 came later. VSC and electro-static document analyser are no available to private examiners. I do not have the letter from Maina Kagio Advocates. I have put a disclaimer in my report. I conducted all 33rd parties. If supplied by client it can be given to court. I was trained for two weeks at CID. Hawk eye is the one that is accredited by NITA. My company is not accredited. The sample signatures in B1 are photocopies. I cannot tell how many times B1 had been photocopied before being given to me. I did not contact Mr. Mamwaka. I would not be surprised if he denied signing Q 1. I am aware of modern equipment. At the moment we do not have any regulatory framework.”
43. In re-examination, he stated that, “I used scanner, magnifying glass and microscope [witness referred to pages 5, 6 and 7 of exhibit No. 2]. I can see the magnified images. I have given opinion based on the images. Lack of VSC 1000 or 6000 did not affect my opinion. [witness referred to page 4 of exhibit No. 2]. Q1 and A1 were in original form. Hawk eye is a different company. Spectral Forensic services is my organization. I’m the founder. After instructions we prepared report and raised fee notes. One can sign and deny.”
44. DW4 Kamau Aidi, the Clerk to Assembly Kirinyaga County and the Chief executive and County officer of the Assembly, testified that, “I’m aware of the motion on 28.7.2020 in relation to this case a motion was brought by Committee for Physical Planning. It was on a report on a decision on Plot No. 159 & 160. It is a recession on a resolution on the plots. They are in Wang’uru town. Once a resolution is passed I transmit it to the relevant agency. I wrote a letter to CECM housing and land development. I have the hansard for the day. It is certified by the hansard editor. It is produced as exhibit No. 9. The letter to the CECM is dated 30.7.2020. The letter is D. exhibit No. 5.”



45. On cross examination, he stated that, “I have been a clerk for 10 years. My role was to communicate the resolution of the Assembly. I do not participate in deliberations. I cannot recall whether I was present. I know the 1st accused. He was a member of County Assembly Wamumu ward. He was a Committee member of one of the Committee. At one time he was Chair of Agriculture Committee. I do not know the 2nd accused.”
46. In re-examination, he stated that, “The hansard records the proceedings of the assembly.”
47. DW5 Emmanuel Karisa Kenga, a Forensic document examiner of more than 32 years testified that, “I trained at CID HQS NBI. Later, went to Jerusalem for training, Lyon France and Moshi, Tanzania. I have testified across the country on forensics. I retired as Commissioner of police incharge of forensic examinations. Currently I am doing document examination privately. On 23.8.2021 I received a request from John Baptista Kanga. He wanted analysis on some documents. They were an allotment dated 5.7.1997 being the questioned document. Specimen signature of Francis Mulu Mamwaka and known signatures of Francis Mamwaka. I was to compare the questioned signature with the specimen and known signature. I examined the signature indicated by blue arrow in the exhibit marked B1 together with known signature marked C1 and C2. I got similarities on the questioned specimen and known signatures. I came to the conclusion that they were from the same author. The methodology was microscope, magnifying glass and observation. I made observations on pen movement, lift pressure and strokes. I also observed free flow of ink. I also observed variation of signature. I attached a comparison chart. I prepared a report. It is dated 24.8.2021. It is exhibit No.10. A1 and C2 was original B1 was a photocopy. They were all clear and legible. The comparison chart shows how the signatures appear on documents. The best document to examine are in their original form. Copies can be manipulated.”
48. On cross examination, he stated that, “I returned in 2015. I have not produced a certificate of service. I was incharge of document examination before my retirement. I worked there from 1996-2011. I was transferred to City Council as a document examiner. I never worked with Susan Wambugu. There was a court case before High Court. I was subject of a vetting system. I was asked to leave the force. I challenged the decision before High Court. I was reinstated. I received a request from 1st accused. He paid me. He presented all the three documents to me including the specimen signatures, one photocopy. They were clear and legible, Photocopies can be manipulated. I did not see the allotment letter for April, 1997. The signatures have peculiar matching characteristics. I would be surprised if the signatures were disowned by Mr. Mamwaka. The government has VSC 6000. The equipment is not available in private sector. We do not have a regulator for private document examiner.”
49. In re-examination, he stated that, “[Witness referred to page 2 of exhibit No. 10]. A1 and C2 were in original form. A1 is a letter of allotment dated 5.7.1997. C2 is an internal Memo dated 16.5.2017. I was at one time removal from servie by the vetting board. I challenged it. I was reinstated. I used a microscope and magnifying glass to enlarge the signatures. The same process is used by the government laboratory. There will be no difference because of machines. My report is professionally done.”

Submissions

50. The appellants urge that there was no evidence connecting them to the letter of allotment dated 1/4/1997 or proof that the letter of allotment dated 5/7/1997 was a forgery, and cite *Samson Tela Akute v Republic* [2006] eKLR.
51. The respondent urges that it proved all the ingredients of the offence of uttering a false documents beyond reasonable doubt, and cites *Joseph Mukuha Kimani v Republic* [1984] eKLR, *Kepha Moses Mogoi v Republic* [2014] eKLR, *Mary Syevutha Peter v Republic* [2019] eKLR and *Maina v Republic*



[Criminal Appeal 48 of 2019] [2023] KEHC 26006 [KLR] [30 November 2023] [Judgment]. It urges that the appellants had the intention to defraud the rightful owners, and cites *Republic v Silas Magongo Onzere alias Fredrick Mamema* [2017] eKLR.

52. The complainant urges the court to find that the prosecution proved that the allotment letters were false, and the appellants intended to use them fraudulently, and cites *Peter Thurania v R* [2022] KLR and *Kepha Moses Mogoi* [Supra].

Analysis and determination

53. From the grounds of appeal as framed, the singular issue for determination is whether the offences were proved beyond reasonable doubt.
54. 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.”
55. Obtaining registration by false pretence is provided under section 320 of the Penal Code as follows; “Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.”
56. PW1 entered into an agreement for sale of Plot No. 159 with Joseph Njeru, Muriuki Githinji, Ngari Kamanga and Nyaga. He testified that, “At the time of purchase the land was occupied by the first accused. I talked to him. He had a liquor business. He was a tenant. I was shown a lease agreement. It is dated 1.1.2011. It was to expire in December 2015. The tenant [1st accused] did not vacate. He went to the rent tribunal at Embu. It was BPRT 125/15. The tribunal ruled that I was the new land lord and he should pay me. I instructed my advocate to have the tenant removed. A distress for rent was instituted. The 1st accused was evicted. I realised that the plot number had been inter changed from 159 to 160. I got to know that the record was tampered with. The police stated that the 1st accused person had tampered with the record.” On cross examination, he stated that, “The first accused was a tenant to Francis Gachui and others. The county office interchanged the numbers. I’m not aware of the sale of the land by second accused persons company to 1st accused. The Plot No. 160 was not owned by Sath Construction. It was owned by Mercy Njambi. The plots were interchanged in the county offices. The accused persons exchanged the plot.” In re-examination, he stated that, “Plot 160 is situated where 159 is supposed to be. The allotment letter to the accused was shown to me by the investigating officer. I have minutes from county council showing that I was the owner.”
57. PW2, the chief land administration officer testified that, “Around July 2017 I was in Kitui office. Some people came. They said that they were police officers from Mwea. I was shown a letter of allotment. [Witness shown a letter of allotment]. It was for 1st April, 1997. It is for Plot No. 160 Wang’uru Market. He wanted me to confirm whether I’m the one who had issued it. I disowned the document. The signature on the reverse side was not mine. After sometime I was called to Mwea. I was asked to supply documents signed earlier. I was also asked to supply specimen signatures. Later was informed that the questioned signature was not mine.” On cross examination, he stated that, “The signature in 1.4.1997 is not mine. The one dated 5.7.1997 is not mine. I did not sign for any document in Wang’uru town. The letter of allotment is a forgery.”
58. PW3, a surveyor testified on cross examination, that, “The owner of Plot No. 160 was a lady. [Witness shown beacon certificate for Plot No. 160]. It was issued to Sath Construction Limited.”



59. PW4 testified that, “I own a plot at Wang’uru. It is Plot number 160. It was given to my husband by Geoffrey Kamau. The plot was transmitted to my name. Later my daughter became a co-owner.” On cross examination, she stated that, “I do not have allotment letter. I do not have beacon certificate. I do not have lease certificate.”
60. PW5, a land economist testified that, “At the land commissioner office we got letter of allotment for 160. It was issued on 5.7.1997. It was issued to Sath Limited. It is marked MFI-20. We extracted a receipt for payment for the lease. In our records we had a letter of allotment dated 1.4.1997 granting the plot to Sath Limited. In our records it was showing that Purity Njambi was paying rates for Plot No. 160 MFI-21. Our records were showing that Plot No. 159 was being paid for by a group of six people led by Nyaga Gichuki. It is MFI-22. We further got record of payment by Mark and Bill Limited. It is MFI-23. There is a certificate of lease for Mark and Bill issued on 8.9.2016 is MFI -24. We wrote to the office of County Coordinator N.L.C. We got minutes for application for lease in favour of Sath Limited. Minutes are MFI-26. We extracted an application for transfer to Ollin Sacco. It is dated 30.1.2017 MFI-27. It is signed by 1st accused. We looked at Registry Index Map for Wang’uru. It is MFI-11. We saw building plans for Plot No. 160. It was done in 1979. We did not take measurement. We relied on the survey records. We were to determine the location of Plot Nos. 159 and 160. We came up with a report dated 6.6.2017. It is signed by J.M. Muthike. It is MFI -28. We found that the property had been allotted to Sath Limited. The property was transferred to Mark and Bill and later to Ollin Sacco. We established that in our records Plot No. 160 is owned by Purity Njambi - PW4. We established that Plot No. 159 in our record is leased to 3 tenants for 99 years. According to the allotment letter dated 1.4.1987 had different acreage from allotment letter to the one on the lease certificate. The letter of allotment had given 99 years w.e.f 1.4.1997 while lease certificate was leasing 1.7.1997. We noted that the letter of allotment did not indicate the use of the property. The allocation done to Sath Limited was irregular in that it gave out a developed property.” On cross examination, he stated that, “We found discrepancies in the letter of allotment. I’m aware of letter by CEC asking N.L.C to cancel title.” In re-examination, he stated that, “We did a report which was submitted. We were able to ascertain ownership. Plot No. 159 Wanguru is owned by six joint owners. They are Nyaga Njeri, Mugo Machau, Francis Gichohi, Benson Githinji and Ngari, Kamanga. This is per allocation of 1970 by Kirinyaga County Council on Plot No.160. I have a record of rate payers. It has an alteration. There was duplication involving Mark Holdings. We got an allotment letter dated 1.4.1997. It was forwarded by Grace Wairagu. We also got another date 5.7.1997.”
61. PW6 testified that, “My husband died. He had a plot in Mwea. It was jointly owned by six people. They were Francis Gichuki, Ngari Kamanga, Njeri Macau, Mugo Macau, Elizabeth Warui. The owners had leased out the plot. Kanga was the 3rd person to lease the plot. In 2013 they decided to sell. Kanga was called. Kanga offered to buy at Kshs. 8 million. We did not agree with Kanga. Later we got Patrick Njiru Kuria. He was to pay Kshs. 14 million.” Her testimony was corroborated by PW7 and PW9.
62. PW8 a Forensic document examiner testified that, “I received exhibits from DCI Mwea East. They were escorted by PC Kennedy Okoth. They were marked as A [i] & [ii] - the questioned documents. A. [i] - Letter of allotment for Plot No. 160 Wangururu Township dated 5.7.1997. A [ii] - Letter of allotment for Plot No. 160 dated 30.7.1997. Documents A [ii] and [ii] contained no signatures for Francis M. Mulu. We had document marked B. It contained specimen signatures by Francis Mulu. We were to ascertain whether the signatures on A [i] & [ii] arrowed in blue were made by the same author when compared with known signatures of Francis Mulu. I did the forensic analysis. I found as follows: [i] On exhibit marked A [i] & [ii] when I compared the signatures with the specimen signature I formed the opinion that the signatures were made by different authors. On 26.9.2017 we received exhibits accompanied with exhibit memo. They were brought by Sgt. Chirchir. They were as follows: Exhibit



marked 'A' a copy of letter of allotment marked 1.4.1997. It was the document in question. Exhibit marked A1 was from County Government of Kitui concerning known signature of Francis Mulu. Exhibit A [ii] were specimen signatures of Francis Mulu. In my opinion the signatures were made by different authors." On cross examination, she stated that, "The letter of allotment dated 5.7.1997 was not signed by Francis Mulu. It was forged. The questioned document was the exhibit marked "A". It is a letter of allotment. According to the exhibit memo the suspect was Francis Mamwaka Mulu. I compared the known signatures and sample signatures of Mamwaka Mulu. I examined him. He was not the one signed the documents. The questioned signature was by John Baptista Kanga. The questioned signature was by Francis Mamwaka Mulu. I compared it with Mamwaka's known and sample signatures. In my opinion they were made by different hands."

63. PW10 the Chief Investigator herein testified that, "At Kerugoya lands office I saw documents in respect of Plot No. 160. There was a document dated 1.4.1997. It is signed by F.M. MAMWAKA. I got a reply from Commissioner. I got the signatory the said Mamwaka. He gave us specimen signatures. We got his known signatures. I forwarded them to the document examiner. The result from the document examiner indicated that Mamwaka is not the one who signed the allotment letter. After that the 1st accused claimed to be the owner. He produced an allotment letter which was not authentic. The minutes from the local authority were forged. They back dated documents. He got land transferred to himself. The second accused is connected to the case through Sath Construction Company . He claimed to own the land." On cross examination, he stated that, "In the cause of investigations I saw the letter of allotment dated 1.4.1997. It is exhibit No. 9. Mr. Mamwaka said that the signature was not his. It was forged. It used to give the accused persons a lease."
64. The 2nd appellant herein, testified that, "My plot is No. 160 in Wang'uru town. I was a tenant in the plot. My landlords leased it as Plot No. 159. I knew the previous tenants. When they were not able to continue I was called to buy off their business in 2004. I was in the premises for 10 years. I had erected buildings. In 2015 a Mr. Theuri, is 2nd accused visited the premises. He claimed that the plot was his. He claimed it to be Plot No. 160. I met him. I told him that I was tenant on the plot as Plot No. 159. He gave me a notice. He wanted to demolish the buildings. I talked to him about selling the plot to me. I demanded to see his title documents. In 2016 he showed me his lease title. I bought the land from him [witness referred to exhibit No. 9]. It is a letter of allotment. I got to see it in 2015. I got it from the 2nd accused person. It was issued to Sath Construction Ltd. In 1997 I had not transacted on this land. The signature at the foot of the exhibit No. 20 is not mine. On cross examination, he stated that, "I was a tenant of parcel Number 159. It is the same plot of land the complainant is claiming. I improved the land. [witness referred to exhibit No. 26]. I am aware of the minutes. It was a meeting held on 29.1.2016. I sat as Chairman of Kirinyaga County Land Management Board. Agenda 10 was application of lease title at Plot No. 160 Wang'uru. It was approved. The minutes do not indicate the applicant. It was by Sath Construction Ltd."
65. The 1st appellant herein and one of the directors of Sath Construction Company Limited testified that, "The Company owned a plot at Wang'uru. It was 160 Wang'uru. I was issued with a Letter of allotment. I have the original. It is D. exhibit No. 3. In 2015 I visited Wang'uru town. I found some activity on the plot. I met a man who said that he was working for John Kanga. I told him that I owned the plot. We had a discussion with 1st accused. He was offering to buy the plot. I got the lease in July 2016. I'm not the one who signed exhibit No. 9. I did not utter it. The document was issued to me by Lands office. I'm aware that an earlier report of the County Assembly was rescinded. The document is dated 30.7.2020. The lease was issued to SATH on 1.7.2016. It was transferred on 8.9.2016 to MARK and BILL." On cross examination, he stated that, "I presented documents to Kirinyaga County Land Management Board in 2015. The letter of allotment is one of the documents I presented in 2015. In 2015 I found a bar and restaurant running on the plot. I was informed that documents were erected



- by Mr. Kanga. We are not the ones who leased land to 1st accused. He was unlawfully on our land. We were allocated land. This was in 1997. I did not meet the people who had leased land to 1st accused. [witness referred to D. exhibit No. 3]. It says that offer of allotment lapses within 30 days if no action is taken. I have not produced receipts' for rates.”
66. DW3 a Private document Examiner, was required to examine, “a]. Letter of allotment for Plot No. 160 Wang’uru township dated 5.7.1997 in original state. It is marked P.1. b]. Letter of allotment for Plot No. 160 Wang’uru town dated 1.4.1997. It was a photocopy. I marked it Q2. c]. Ministry of lands infrastructure and urban development internal Memo being the signature of Francis Mulu dated 16.5.2017. It was original. It is marked - A1. d]. Ministry of Lands infrastructure and urban development Internal Memo being signature of Francis Mulu dated 14.7.2017. It is a photocopy marked it A2. e]. Request sample signatures of Francis Mulu Mamwaka in photocopy state. I marked it B1. I was to ascertain whether signature in the documents marked Q1 to Q2 bore similarities with A1, A2 and B1. I examined the signature on exhibit Q1 against A1, A2 and B1. My conclusion is that they displayed characteristics that were consistent and similar with A1, A2 and B1. I prepared a chart. That shows the similarities. I formed the opinion that they share common origin. I examined Q2 with A1, A2 and B1. I could not find an agreement between them. I prepared an illustration. I further examined Q1 and Q2. In my view, I could not find similarities. In my view they do not share common origin.”
 67. DW4, the Clerk to Assembly Kirinyaga County and the Chief executive and County officer of the Assembly, testified that, “I’m aware of the motion on 28.7.2020 in relation to this case a motion was brought by Committee for Physical Planning. It was on a report on a decision on Plot No. 159 & 160. It is a recession on a resolution on the plots.”
 68. DW5 also examined the allotment dated 5.7.1997 in comparison with the specimen and known signatures of Francis Mulu Mamwaka and concluded that they were from the same author.
 69. In their sworn defences, the appellants herein merely denied forging the allotment letters. Although, an accused person is never required to prove his innocence, the 1st appellant’s contention that Sath Construction Limited was the owner of Plot No. 160 was devoid of any evidentiary basis on the evidence.
 70. On the other hand, there is consistent evidence that Plot No. 160 was owned by PW4, Purity Njambi Muriithi while Plot No. 159 originally belonged to five families as testified by all the prosecution witnesses, and particularly by PW1, PW6, PW7 and PW9.
 71. On the acquisition by the 1st appellant’s company of allotment letters to Plot No. 160, is suspect, PW2 unequivocally disowned both the signature and the issuance thereof. Apart from the estoppel that a tenant cannot deny the right of the landlord to ownership of the property, the 2nd appellant was a tenant in Plot No. 159 for 10 years, and he knew who his landlords were, and he was subsequently evicted by PW1 when his intention to purchase the land did not materialize. The proprietor of Plot No. 160 categorically denied any intention to dispose of the same to any party.
 72. The allotment letters were false; the appellants knew they were false and they used them to defraud; and the appellants did use the letters to obtain a certificate of lease on the suit property. see *Kepha Moses Mogi v R*, supra and section 348 of the Penal Code.
 73. This court must, therefore, draw the inference that the 1st appellant, with intent to defraud the rightful owners, misrepresented as genuine, the allotment letters dated 1/4/1997 and 5/7/1997, on the strength of which he procured a certificate of lease.



74. Weighing the evidence on record in the case as a whole as counselled by *Okethi Olale v. R* [1964] EA 555, this court finds that the prosecution proved its case against the appellants beyond reasonable doubt.
75. Consequently, in terms of *Okeno v. R* [supra], this court further finds that the trial court's conviction of the appellants on the 3 counts was safe, and there is no basis for interference on the conviction.
76. As regards the sentences, this Court takes the view that the trial court was overly lenient in sentencing for the offences of uttering, and obtaining by false pretences contrary to sections 349 and 320 of the Penal Code, which attract sentences of imprisonment for 3 years and 1 year, respectively. However, in the absence of a cross-appeal by the DPP and or Notice of Intention to seek enhancement of sentence, this Court should not intervene.
77. However, although there is no cross-appeal by the DPP, this Court as revision court must in exercise of its supervisory jurisdiction pursuant to Article 165 [6] of *the Constitution* and section 364 of the Criminal Procedure Code correct an illegal order by the trial court. In sentencing the appellants, the trial court ordered that:

“In this case, I would grant the accused persons the option of a fine in the 2nd and 3rd counts, they will pay Kshs.50,000/= each for each count or serve in prison for one year. In the 4th count they will also pay Kshs.50,000/= each or one year in prison. The sentences will run concurrently.”

78. The order for concurrent service of the sentences contravenes the provisions of section 37 of the Penal Code, which provides 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.]”

79. Consequently, this Court must set aside the order for concurrent service of the default sentences and, in terms of section 37 of the Penal Code, direct that the sentences shall be served consecutively.

Orders

80. Accordingly, for the reasons set out above, the court finds the appellants' appeals are without merit and they are dismissed.
81. The order for concurrent service of the default sentences is set aside, and in terms of section 37 of the Penal Code direct that the sentences shall be served consecutively.



82. Liberty to apply is granted to the DPP in view of the order in paragraph 79 above.

Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwangi for Mr. Mwaura for the appellants.

Mr. Mamba for DPP.

Mr. Magee for the Complainants.

