



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: GICHERU, OWUOR & KEIWUA, JJ.A.)
CRIMINAL APPEAL NO. 109 OF 2000
BETWEEN

DANSON MUREU MACHARIAAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from the Judgment of the High Court of Kenya at Nyeri
(Mr. Justice Juma) dated 3rd April, 2000
in
H.C.C.CR. APPEAL NO. 67 OF 1999)

JUDGMENT OF THE COURT

The appellant, Danson Mureu Macharia, was charged before the Principal Magistrate's Court at Muranga with the offence of obtaining Registration by false pretences contrary to section 320 of the Penal Code. It is alleged that on December 7, 1977, at Muranga Lands Office, he willfully procured for himself the registration of Land Parcel Number Location 2/KANGARI/589 by falsely pretending that he had bought that piece of land from the complainant, Ngachu Macharia. The complainant has denied that he sold or transferred the piece of land by way of gift to the appellant.

According to evidence tendered before the Magistrate's Court, the complainant hailed from Nyandarua District where he moved to from his original home at Kangari in Location 2 of Muranga District where this piece of land, the subject matter of these proceedings, is situated.

The complainant and the appellant in the appeal, are brothers. The complainant had given his brother the title to the land to charge it as security for a loan. The appellant returned later for the brother's national identity card saying there was no need for the complainant to sign any documentation because the appellant was well known.

In 1982, the complainant asked his brother to no avail to return the title. However, in 1989 he searched the land register and discovered that the appellant had caused the land to be transferred into his name instead of using it as security for a loan.

The complainant had not signed the transfer form, which effected change of ownership of the land. He was, in the absence of any power of attorney given by him to the appellant the only person entitled in

law to sign any transfer of the land. The application for consent of the Land Control Board to transfer the land had also not been signed by the complainant or any other person authorized by him. The matter was reported to the Police who instituted investigations.

The Police investigations revealed that a Mr. John Ngugi Kihato who was a one time assistant chief of Kigumo Kangari Sub-Location, did at the request of the appellant insert the name of the complainant in the transfer form. The appellant is alleged to have told this witness that he had bought the land from the complainant. The Police also found that the signature on the application for the Land Control Board's consent did not belong to the complainant.

The Magistrate in her judgment stated that:

"I am unable to believe accused bought the land from the complainant. Why is it that accused talks of paying Kshs.8,300/= in Court and Kshs.500/= in his charge and cautionary statement. Why is it that exhibits 3 & 4 say transaction was a gift. Exhibit 4 further says consideration was Kshs.500/=. I am unable to reconcile this information. This consideration is material and to me points at one thing, dishonesty.

Evidence tendered here shows that complainant never sold his land to the accused as no one can tell from what or for how much he sold this land ."

The Magistrate found the appellant guilty as charged, convicted him and taking into account his advanced years discharged him under section 35 of the Penal Code. It is from that conviction that an appeal was preferred to the superior court. The learned judge of that Court in his judgment had also this to say regarding the contradictoriness of the evidence and stand adopted by the appellant in his defence:

"In any event as the learned Resident Magistrate pointed out the defence case was riddled with inconsistencies. Assuming that the appellant bought the land from the complainant, the purchase price according to the record below was not agreed upon in that various purchase prices were mentioned by the witnesses so that one is at a loss as to the exact amount that the property was to be sold for."

In our judgment, we find no substance in the appellant's contention that the learned judge had failed to reassess the evidence on record so as to hold that the conviction was not warranted. We are satisfied that the appellant had been properly and rightly convicted for the offence of obtaining registration by false pretences.

We accordingly dismiss this appeal.

Dated and delivered at Nyeri this 2nd day of November, 2001.

J.E. GICHERU

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

M. OLE KEIWUA

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR



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