

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATES COURT AT KISUMU

CRIMINAL CASE NO. 542 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

VALLERY JIMOI KHAZALWA.....ACCUSED

R U L I N G

The accused person faces three counts. The first is obtaining registration of land by false pretence contrary to section 320 of the penal code.

The particulars being that on the 24th day of August, 2012 at District land registry Kisumu in Kisumu East District, within Kisumu County. The accused wilfully procured for herself a registration of land parcel No. Kisumu/Konya/5087 by falsely pretending that it had been transferred to her by Rudi Mar guard Electronic Co. Ltd a fact which she knew to be false.

The second count is obtaining land registration by false pretence contrary to section 320 of the penal code. The particulars are that on the 24th day of August 2012 at District Land registry Kisumu in Kisumu East District within Kisumu County, the accused wilfully procured for herself a registration of land parcel No. Kisumu/ Konya/ 4794 by falsely pretending that it had been transferred to her by Rudi Mar Guard Electronics Co. Ltd a fact she knew to be false.

The third count is obtaining money by false pretence contrary to section 313 of the penal code. The particulars are that on the 24th day of September 2013 at Kenya Women Finance Trust in Kisumu East District within Kisumu County, with intend to defraud, obtained from John Odindo Ogido, Oscar Ogilo and Stanley Yanga Odindo a sum of Kshs. 7.8 million by falsely pretending that she was in a position to sell them parcel of land numbers Kisumu/ Konya /5087 and Kisumu/ Konya/ 4794 a fact she knew to be false. A total of six witnesses testified during the hearing.

The first witness **George Gachel** who was previously a land registrar in Kisumu testified that he received applications for transfer of land parcels No. 5087 and 4794 from Vallery Khazalwa (accused)

He inspected the documents accompanying the transfer forms. He noticed that the name on the original Title deed was in the name of the accused person.

He signed the copies of the green card and after being satisfied that the procedures had been followed, he proceeded to have the land transferred and he appended his signature to the title deed.

PW 2 John Odindo Ogilo testified that he entered into a contract with the accused to purchase the two parcels of land.

He stated that they conducted a search and found that the parcels were registered in the name of the accused.

PW3 Dave Lungaho Siganga testified that he had been instructed by the complainant Rudi Mar Guard to find a security firm which could secure his parcels of land.

Mr Siganga contacted Group 4 security group who went to guard the parcels.

However on arrival, they found another security firm.

Mr Siganga conducted a search on the parcels on October 2013 and the results showed that the land was owned by Rudi Mar guard Co. Ltd.

PW 4 PC Reuben Tambaa the investigating officer testified that the complainant stated he had purchased two parcels of land which were registered in the name of Ruby Mar guard Electronics Co. Limited. He left the land in the hands of a caretaker- the accused herein. He later learnt that the land had been transferred to the accused person.

PW 4 wrote a letter requesting to be furnished with documents from the file of the parcels of land. He was however informed that the file could not be traced.

PW4 further wrote a letter to the registrar general and got a reply that the complainant and the accused were directors and share holders at Rudi Mac guard Co. Ltd.

The complainant never handed over the original title deed that he held to confirm whether they were given or not.

PW 6 Monicah Bor a land registrar testified that some entries in the green card in the name of the accused together with the assurance of the title deed beard a false signature and a false stamp belonging to her.

The complainant **Rudolph Mac Guard PW 6** stated that he purchased the two parcels of land from Alice and Henry Chepkemoi. The parcels were later registered in the name of a company Rudi Mac guard Electronics Ltd.

He stated that in the cause of being in the country he met the accused person whom he appointed as caretaker of his parcels of land. The accused was living in a house in one of the properties. He stated that he later learnt that his parcels had been fraudulently transferred to a third party.

After going through the evidence of the prosecution witnesses, the issue to be determined is whether the prosecution has established a prima facie case to warrant the accused person being placed on her defence.

It is a principal that if the prosecution has not made out a case against the accused person, the accused is entitled to an acquittal.

I have also gone through the submissions filed by the defence.

From the evidence on record it is clear that the two parcels of land were registered in the name of Rudi Mar guard Electronics Co. Ltd. Both the complainant and the accused person were the directors and share holders of the company.

The accused was not only a care taker. She had a stake in the company. From the evidence adduced, it is clear that investigation were not properly conducted in this case. I have to concur with the defence that the documents used in carrying out the conveyance which led to the transfer of the parcels of land from the name of the company to that of the accused person were never produced.

I therefore cannot be known if the transfer and conveyance documents were jointly or severally executed. Transfer of the parcels of land might have been unprocedural. However it would have been the duty of the land officials to explain how these transfer come to be.

Further the complainant refused to hand over the original title deed to the investigating officer for the purpose of investigations. This was essential to determine the genuineness of the Title deed.

The investigating officer admitted that he was unable to complete the investigations as he had been informed that the records relating to the transfer of both parcels were missing.

It is clear that pw4 was unable to complete investigations as the necessary documents and information was never availed to him. This is clearly due to the ineptness at the land registry.

For the above reasons. There is no sufficient evidence to warrant placing the accused person in her defence.

The accused is acquitted under section 210 of the criminal procedure codes

Ruling dated and delivered this 12th day of February 2019.

M.Agutu

Senior Resident Magistrate.

In the presence of

Accused person

Ms Onsongo for Accused

Prosecution: Caroline.

C.A: Amondi

Hon .M.Agutu (SRM)

Court : Title deed deposited to be returned to the surety

Hon . M.Agutu (SRM)

26/2/19

Coram

Before : M.Agutu(SRM)

Prosecutor: Caroline

CA: Amondi

Accused: Absent

Prosecutor: We pray for copies of certified copy of proceedings

Court: Copies of the certified proceedings to be availed to the prosecution.

Hon. M.Agutu (SRM)

26/2/19.

CERTIFIED TRUE COPY OF THE ORIGINAL


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CHIEF MAGISTRATE
KISUMU