

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.064 OF 2008

1. GERALD NSUBUGA

5 **2. ANGELLO MUWANGAAPPELLANTS**

VERSUS

UGANDA.....RESPONDENT

10 *[Arising from High Court Criminal Appeal No. 95 of 2007 from the Judgment of Hon. Justice Lawrence Gidudu, a Judge of the High Court , delivered on 2nd June 2008]*

CORAM: HON. MR. JUSTICE A.S NSHIMYE, JA

HON. MR. JUSTICE REMMY KASULE, JA

HON. MR. JUSTICE KENNETH KAKURU, JA

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JUDGMENT OF THE COURT

This appeal has been pending in this court for a long time, the Notice of appeal having been lodged in this Court on 11th June 2008. It arises from the decision of *Hon. Justice Lawrence Gidudu J*, in High Court Criminal appeal No. 95 of 2017, dated 2nd June 2008.

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It first came up for hearing before Kikonyogo DCJ, Engwau JA and Arach JA. It appears the matter did not proceed. On 14th March 2013 the appeal came up for hearing again. This time before Kavuma JA, (as he then was) Arach JA (as she then was) and Kasule JA, the appeal was heard and Judgment was reserved to be delivered on a date to be given on notice. Before a
25 decision could be taken of the matter, Justice Arach was elevated to the Supreme Court.

It was therefore found necessary to re-constitute the panel to re-hear the appeal. The current panel was re-constituted and when the matter came up for re-hearing on 4th June 2014, the parties adopted their earlier submissions which were already on the record. The Court then reserved the matter for Judgment. This inordinate delay is highly regrettable.

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Another matter that requires clarification is that, Gerald Nsubuga the 1st appellant and Angello Muwanga the second appellant, filed a joint notice of appeal on 11th June 2008 following a Judgment of the High Court that had been delivered on 2nd June 2008.

10 On 13th June 2008, the Director of Public Prosecutions also filed a notice of appeal in respect of the same matter. Both appeals were registered as *Criminal Appeal No. 64 of 2008*. On 29th July 2008 the DPP filed a memorandum of appeal and on 29th July 2008 Nsubuga and Muwanga also filed their own joint memorandum of appeal. The DPP later on 29th September 2008 filed a supplementary memorandum of appeal. In their respective appeals each party named the other as
15 respondents.

Be that as it may, the appeal filed by Gerald Nsubuga and Angello Muwanga was, at the hearing of this appeal, treated as the substantive appeal and the one filed by the DPP was treated as a cross appeal.

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We find that the errors pointed out above are procedural and not substantive and no prejudice has resulted therefrom. We shall proceed to determine the appeal and the cross appeal as urged by both parties.

25 **Back ground**

The appellants were jointly charged with forgery, uttering a false document, obtaining property by false pretences, conspiracy to commit a felony and obtaining registration by false pretences which are all offences under the Penal Code Act (Cap 120).

They were both tried for the said offences at the Chief Magistrate's Court, Buganda Road, Kampala, and were convicted as follows:- The 1st appellant of uttering a false document and sentenced to 2 years imprisonment of obtaining property by false pretences and sentenced to 3 years imprisonment of conspiracy to commit a felony and sentenced to 2 years imprisonment of
5 obtaining registration by false pretences and sentenced to 6 months imprisonment. The second appellant was convicted of forgery and sentenced to 2 years imprisonment of uttering a false document and sentenced to 2 years imprisonment and conspiracy to commit a felony and sentenced to 3 years imprisonment. The sentences were to run concurrently.

10 In addition, each of the appellants was ordered to compensate the complainant with Shs. 5,000,000/=. Being dissatisfied with the Judgment of the Chief Magistrate, both appellants appealed jointly to the High Court, against both conviction and sentence.

The High Court upheld and confirmed the second appellant's conviction and sentence on count
15 one (forgery). The rest of the convictions were quashed and the sentences were set aside.

As for the 2nd appellant, the conviction on count 6 of obtaining registration by false pretences was upheld and the sentence was enhanced to one year imprisonment. The rest of the convictions were quashed and the sentences set aside.

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As already stated both appellants were dissatisfied with the decision of the High Court and appealed to this Court on the following grounds:-

25 **1. The learned Judge erred in law when he failed to properly evaluate the evidence of PW4, PW5, PW10 and the circumstances surrounding the prosecution's case, and thereby came to a wrong conclusion that PW5 did not sign exhibit P.2.**

2. The learned Judge erred in law when he failed to properly evaluate the evidence of PW10 and thereby upheld the conviction of the 2nd Appellant of the offence of forgery.

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3. *The learned Judge erred in law when he upheld the conviction of the 1st Appellant on the offence of obtaining registration by false pretences.*

4. *The learned Judge erred in law when he enhanced the 1st Appellant's sentence on the charge of obtaining registration by false pretences.*

5. *The learned Judge erred in law when he upheld the compensation order against the Appellants.*

10 The respondent was also dissatisfied with the decision and appealed to this Court. The memorandum of appeal is dated 23rd July 2008 and was lodged in Court on 24th July 2008. However, on 29th September 2008 the respondent filed a supplementary memorandum of appeal /cross appeal stating the following grounds;-

15 1. *The Hon. Learned appellate Judge erred in law when he held that the forged transfer form exhibit P2 did not tell a lie about itself.*

2. *The Hon. Learned appellate Judge erred in law and in fact when he held that exhibit P2 was not a false document thereby erroneously acquitting the respondents of uttering a false document.*

3. *The Hon. Learned appellate Judge erred in law when he held that a land title is not capable of being stolen.*

25 4. *The Hon. Learned appellate Judge erred in law when he acquitted the respondents of the offence of conspiracy to commit a felony.*

This is a second appeal and as such this court is not required to re-evaluate the evidence, unless the first appellate court is found to have failed to do so. See; *Kifamunte versus Uganda*,

Supreme Court Criminal Appeal No. 10 of 1997 (unreported). Rule 30(1) of the Rules of this Court only refers to re-evaluate of evidence in respect of first appeals.

Section 45(1) of the Criminal Procedure Act applies to second appeals.

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It stipulates as follows;-

“45 Second appeals

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(1) Either party to an appeal from a magistrate’s court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.” (Emphasis added)

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From the foregoing provisions, a second appeal to this court ought to be in respect of issues of law only.

All counsel in this matter made lengthy oral submissions in support of their respective appeals.

We find no reason to reproduce them here especially as we are only concerned with resolving

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issues of law. In the case of *Kifamunte versus Uganda (Supra)*. The Supreme Court discussing the duty of the second appellate Court had this to say at page 11 of the Judgment;-

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“Once it has been established that there was some competent evidence to support a finding of fact, it is not open, on second appeal, to go into the sufficiency of that evidence or the reasonableness of the finding. Even if a court of first instance has wrongly directed itself on a point and the court of first appellate court has wrongly held that the trial court correctly directed itself, yet, if the court of first appeal has correctly directed itself on the point, the second appellate court cannot take a different view R. Mohamed Ali Hasham vs. R(1941) 8 E.A.C.A 93.”

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On second appeal, the Court of Appeal is precluded from questioning the findings of fact of the trial court, provided that there was evidence to support those findings, though it may think it possible, or even probable that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law: R. vs Hassan bin Said (1942) 9 E.A.C.A 62.

We shall accordingly be guided by the above authority in the resolution of issues raised in the appeal and cross appeal.

In brief Mr. Kusasira, learned counsel who appeared for the appellants, submitted on grounds 1, 2 and 3 that the 2nd appellant never signed the land transfer form which was used to transfer the suit land into the name of the 1st appellant, but was only present when the transaction took place and that he was occupying the suit land as a *Kibanja*/customary tenant, not by virtue of the said transfer.

The appellate court, he contended, had failed to properly evaluate the evidence with the result that the said court arrived at a wrong conclusion. Further, there were major inconsistencies in the evidence of PW5, Rebecca Musoke, whose signature is said to have been forged on the impugned transfer form and that it had taken her too long to report the forgery. Also when she discovered the forgery she did not immediately inform her brothers, the beneficiary.

She had lodged a caveat and then removed it before the issue had been resolved, claiming that she had done so because she had ceased to be the administrator, yet in fact the caveat was removed when she was still the administrator of the estate.

Learned counsel also challenged the testimony of PW10 which he contended, should not have been relied upon by the appellate Judge. He faulted the Judge for having failed to properly evaluate the evidence of PW10, the handwriting expert. He contended that PW5 had not signed exhibit P1, but that the same had been signed by the second appellant.

He contended that exhibit P12 was not authentic as it did not show the date when the specimen signature of PW5 was taken and that it was never put to the witness (PW5) to confirm its validity in evidence.

At any rate, the person who took the specimen signatures is not the one who testified. The specimen signatures having been taken 18 years after the questioned signatures had been executed there was bound to be a variance resulting from lapse of time. On the enhancement of sentence, counsel contended that it was unjustified in the circumstances of the case.

He prayed asked court to quash the compensation order, contending that, there was no loss occasioned to the complainant capable of being recovered through an ordinary suit and as such the compensation order was misconceived.

Ms. Tumuhaise Senior State Attorney, learned counsel for the respondent, opposed the appeal. She submitted that the learned trial Judge had properly evaluated the evidence and had come to the correct decision. The case revolved around a forged land transfer form which had been used to effect a transfer of land into the names of the 1st appellant with the assistance of the second appellant. PW5 was at the time of the trial, the only one serving as an administrator of the estate of the deceased proprietor of the suit land. She, PW5, had denied having signed the transfer form.

There was no sale agreement in respect of the land, there was no acknowledgement of receipt of the purchase price by the administrator of the estate or any beneficiary of the estate.

The evidence of the handwriting expert confirmed that PW5, the Administrator of the estate, had not signed the impugned transfer form. The handwriting expert had concluded that the transfer form had been signed by the second appellant.

Learned counsel submitted further, that the inconsistencies in the prosecution case pointed out by counsel for the appellants were minor and did not go to the root of the case.

Counsel supported the appellate Judge's decisions to enhance the sentence given to 1st appellant. She argued that the sentence was legal and justified. She urged this court to uphold the decision of the trial Court and that of the High Court in respect of the order for compensation.

The complainant had been deprived of the use of her land and therefore the order for compensation was justified. She prayed Court to dismiss the appeal.

Counsel for the respondent then proceeded to argue the cross appeal.

On ground one she contended that the learned appellate Judge erred when he held that the forged transfer form Exhibit P2 did not tell a lie about itself, and on ground 2, that the appellate Judge erred when he held that exhibit P2 was not a false document and thereby erroneously acquitted the respondent of the offence of uttering a false document.

Counsel argued that the appellate Judge wrongly found that although the transfer form contained a forged signature, it was not a false document.

10 The Judge, on appeal, having found that the signature on the transfer form had been forged, he could not at the same time have held that the same document was not false. Since the document told a lie about itself, in that, it purported to have been signed by PW5 whereas not, it could only be a false document. Counsel contended that **Section 345(1)** of Penal Code Act defines a false document to also include false entries. The document in issue, counsel argued, told a lie about
15 itself and as such the appellate Judge erred when he held that it did not.

On ground 3 of the cross appeal, counsel submitted that the learned appellate Judge erred when he held that a land title is not property capable of being stolen. She contended that a land title is property, whose value is over two hundred shillings and as such it is capable of being stolen under **Section 253** of the Penal Code Act.

20 On ground 4 counsel submitted that the appellate Judge erred when he acquitted the respondents of the offence of conspiracy to commit a felony. Since there was overwhelming evidence to prove this offence, as common intention had been established.

In reply Mr. Kusasira generally repeated his earlier submissions contending that compensation was unjustified as a civil suit would have been time barred and that the 2nd appellant had all
25 along occupied the property as a customary tenant.

He invited this Court to accept the decision of the High Court in ***Baigumamu versus Uganda [1972] EA 26*** in which it was held that the falsity must be of the purport of the document, not its

contents. The document must tell a lie about itself. He also asked court to adopt the reasoning and decision of the Court of appeal of Kenya in **Azolozo vs Republic [1986-1989] EA 16** where the said court also held that the falsity of a document must relate to the document itself and not its contents.

- 5 He argued that the appellate Judge having acquitted the respondent of the offence of obtaining property by false pretences, the charge of conspiracy to commit the offence automatically elapsed.

He further argued that whenever two persons are jointly charged with the substantive offence, as in this case in which both appellants were charged with the offence of obtaining property by false pretences, they cannot be charged with conspiracy to commit the same offence. He cited as his authority the case of **George Iga and Another vs Uganda (1971) HCB 153 and Verrier vs DDP(1967) AC 195**.

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He asked this court to dismiss the cross appeal

Resolution

- 15 We have carefully considered the submissions of respective counsel on both the appeal and the cross appeal we have also carefully perused the court record and analysed the authorities cited to us. We now proceed to resolve the grounds of the appeal and cross appeal beginning with those of the appellants

Ground 1

- 20 ***1.The learned Judge erred in law when he failed to properly evaluate the evidence of PW4, PW5, PW10 and the circumstances surrounding the prosecution's case, and thereby came to a wrong conclusion that PW5 did not sign exhibit P.2.***

This is a second appeal, and as such this court is not required to re-evaluate the evidence unless the 1st appellate court had failed in its duty to do so See; **Henry Kifamunte Vs Uganda**

25 **(Supreme Court Criminal Appeal No. 10 of 1997).**

It is contended by the appellant on this ground that the learned appellate Judge failed in his duty to re-evaluate the evidence in the result that he reached a wrong conclusion.

5 The learned appellate Judge is faulted for having found that Pw5, Ms. Musoke, did not sign exhibit P.2, the questioned transfer form, upon which the suit land was transferred into the names of the 1st appellant. The appellate Judge at P.6 of his Judgment agrees with the evidence of PW10 Ntarirwa, a handwriting expert, that indeed the signature of PW5 on the questioned transfer form and all the other entries on that form were made by the 2nd appellant and not PW5. He went on to uphold the learned Magistrate's finding of forgery and thus upheld the conviction on that Court.

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The findings of (exhibit P18) of PW10 the Government handwriting Analyst on this issue were as follows;

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“I have examined the questioned signature on the land transfer and I compared these with the specimens availed with these following;-

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2. I have observed significant differences in the construction of the initial letters: letter proportions; the absence of small letter ‘e’ later “e” (after letter “y”) and the extent and design of the final flourish underline between the questioned signature (marked F for the witness) and then the specimens on EXH."B". In my opinion, the writer of EXH."B" specimens did not write the questioned signature (marked F) on the TRANSFER EXH "D".

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3. I have also found the questioned signature (for the Purchaser) on the LAND TRANSFER to differ significantly from the specimens on EXH."C". These differences include the letter designs (e.g S, the letter N);letter proportions (e.g S compared to U), the initial stroke on S): the second "u"(Note that it appears as an "i" on the questioned signature),e.t.c. In my opinion, there is no evidence to show that the writer of EXH. "C" specimens to have written the questioned signature (Marked G) on EXH."D").

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4. *I have also found certain differences (e.g the letter design of k; the letter proportions of R & K; the position of the R-K letter join and some other characteristics) between the questioned signature (marked e) on the TRANSFER and then the specimens on EXH. "A" (from REBECCA MUSOKE) in my opinion, there is no evidence to show that she wrote this questioned signature for the vendor on EXH. "D".*

5. *I have found some significant similarities in letter constructions (e.g A,G,b,p); letter joins (e.g. b-u): letter proportions, e.t.c. between the questioned handwritings on the LAND TRANSFER EXH. "D" and the specimens on EXH. SDI (from ANGELO MUWANGA).*

However, I have also observed several differences (e.g. the final strokes on letter "a" "s", "d" "s"). This may be because of variations which may not have been found in the few samples submitted and, in my opinion, it is very possible that the writer EXH. SD1 specimens wrote the questioned entries on EXH. "D"

It is trite law that before a court of law comes to any findings of fact, it must look at the whole case as a whole. The court must consider the evidence of both sides and look at the whole evidence together.

In this case, both appellants denied having forged PW5's signature on the questioned transfer form. PW5 on her part also denied having signed the said transfer form. As already stated above, both the trial Magistrate and the learned appellate Judge on appeal agreed with the testimony of the independent expert witness PW10, that indeed the questioned signatures on the transfer form were written by the 2nd appellant. We find that before coming to this conclusion the appellate Judge properly re-evaluated all the evidence that was before him including the one that we have partly reproduced above, and he, in our view, arrived at the correct conclusion.

We therefore have no reason to fault his findings of fact in this regard. As already stated above, on a second appeal, the Court of Appeal is precluded from questioning the findings of fact of the trial Court provided there was evidence to support those findings. See **R. Hassan bin Said (1942) EACA P.62.**

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Ground one of the appeal therefore fails.

Ground 2

The learned Judge erred in law when he failed to properly evaluate the evidence of PW10 and thereby upheld the conviction of the 2nd appellant of the offence of forgery.

While resolving ground one above we have come to the conclusion that the learned trial Judge had properly re-evaluated the whole evidence and was justified in relying on the evidence of PW10 which pointed to the fact that the 2nd appellant had filled the questioned transfer form and had signed it purporting to be PW5 Rebecca Musoke. In our view the document was false as it told a lie about itself. It purported to be a transfer form signed by PW5 whereas it was not. We agree with the concurrent finding of both lower courts that exhibit P2 is a false document the same having been forged.

20 This ground also fails for the same reasons already set out in ground one.

Ground 3

The learned Judge erred in law when he upheld the conviction of the 1st appellant on the offence of obtaining registration by false pretences.

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We have already found in respect of grounds 1 and 2, that indeed the transfer form was a forgery. The 1st appellant must have known this fact. This is because in his own testimony, he stated that the transfer form was signed by PW5 in his presence. We have already concluded that the learned trial Magistrate did not believe his testimony and the learned appellate Judge did not either. This being a second appeal this court is concerned with only issues of law and not issues

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of fact. See **Section 45(1) of the Criminal Procedure Act** (Supra). We have found that the appellate court properly executed its duty of re-evaluating the evidence. That being the case, we cannot, as a second appellate court, then fault the findings of fact of both the trial and the appellate court.

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Suffice it to say, the 1st appellant ended up being registered as proprietor of the suit land using a forged document which he himself tendered to the land office to be registry as proprietor for thereof. His registration as proprietor of that land was therefore obtained by false pretences. In this regard therefore we find no reason to interfere with the concurrent findings of fact by both lower courts.

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This ground number 3 accordingly also fails.

Ground 4

15 ***The learned Judge erred in law when he enhanced the 1st appellant's sentence on the charge of obtaining registration by false pretences.***

The reasons given by the learned Judge for enhancing the 2nd appellant's sentence is set out at page of the appellate Judge's Judgment as follow:-

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“Perhaps I should add that the effect of my judgment is that A2 serves a longer sentence than A1 the reason being that from the record of evidence, A2 is the author and architect of the entire fraudulent scheme and even the beneficiary of the products of the land. A1 appears to have been merely used to obtain a false registration.”

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We find no error of law was committed when the Judge enhanced the sentence. The Judge had the power to do so. We find that the appellate Judge did not apply a wrong legal principle when he enhanced the sentence. He gave the reasons why he did so and we find no reason to fault him. This ground also fails.

Ground 5

The learned Judge erred in law when he upheld the compensation order against the appellants.

We have perused the court record. We have found no reason to interfere with the concurrent
5 decision of both lower courts in respect of the issue of compensation. The reasons given by the appellate Judge are valid and are based on correct principles. The facts relied upon by the Judge to come to the decision that he did are well set out in the Judgment are valid.

We have no reason to fault him. This ground has no merit and we hereby dismiss it.

All the grounds of the appeal having failed, the appeal fails and the same stands dismissed.

10 **Cross Appeal**

The respondent filed a cross appeal on 4 grounds.

Ground 1

1. The Hon. Learned appellate Judge erred in law when he held that the forged transfer form exhibit P2 did not tell a lie about itself.

15 Learned counsel for the respondent contended that the learned appellate Judge erred when he held that the land transfer form exhibit P2 did not tell a lie about itself.

On this issue the learned appellate Judge held as follows at page 14 of his Judgment.

“Forgery and uttering a false document are technical offences with technical definitions and require careful approach in order to appreciate them.

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By signing into a document purporting that another person is the one who did it whereas not is forgery as I have indicated in conviction of A2 in count 1 of the charge sheet.

5 *However, for the offence of uttering a false document to stand, the document must tell a lie about itself. In this case, the Land Transfer Form which was registered as Instrument No. Kampala 124743 registered on 24/4/87 is a proper document. It is only the entries as regards the purport that PW5 and the late Kaddu was transferring the land to Gerald Nsubuga A1 and their signatures that were false. Otherwise the form is the type used when genuine persons are transferring land either after a sale or gift inter vivos.”*

He concluded on this ground as follows at page 15 of his Judgment.

10 *“Consequently, since the Land Transfer Form is the normal/usual or legal document used in transferring land, then the charge of uttering a false document just because the entries were false cannot stand.*

15 *Accordingly the convictions of both appellants in count 3 cannot technically stand and are hereby quashed and their respective sentences of 2 years' imprisonment set aside. Ground 7 succeeds.”*

With all due respect we do not agree with the above holding. A blank form of whatsoever nature does not become complete document until the blanks have been filled in as required.

20 Once the blanks have been filled and the document signed, then it becomes a complete legal document. A blank transfer form cannot be used to transfer land and is not a legal document. It is only a statutory form. Statutory forms are a common feature, in a number of legislation both substantive and subsidiary. They are also commonly used by banks, insurance companies and a host of other institutions to ease work and to save time. A form becomes a legal document upon
25 being completed, signed and witnessed. In this case prosecution exhibit P2 is a statutory land transfer form, provided for under the Registration of Titles Act which was duly filled, completed, signed and witnessed, where it is so required. The information filled therein is what would have otherwise made it complete, legal and capable of effecting a land transfer from the vendor to the
30 purchaser.

This document indicates that one KUPULIYANO BISASE of P.O Box 2446 Kampala was transferring his land Mengo Block 185 Kyadondo Plot 575 to one Gerald Nsubuga on Thursday April 1987. Bisase had long died, having passed away in 1985. The persons who purportedly signed the said transfer form on his behalf are one Kaddu and One Rebecca Musoke, (PW5). The
5 signatures are stated to have been witnessed by one Luboyera, a public servant.

As already stated above, evidence showed that the signatures of Rebecca Musoke's and that of Luboyera the witnesses had also been forged.

We have no hesitation in finding that the above document was a forgery and the person who tendered it to the land Registry purporting it to be a true and correct legal document , was in
10 fact tendering a forged document.

The document did not just tell a lie about itself, it told a number lies about itself. We accordingly uphold this ground of the cross appeal and we set aside the decision of the High Court in this regard.

We find the 2nd appellant guilty of uttering a false document C/s 351 the Penal Code Act and we
15 uphold the decision of the Chief Magistrate in respect of this count, on both conviction and sentence.

Ground 2

*The Hon. Learned appellate Judge erred in law and in fact when he held that exhibit P2 was not a false document thereby erroneously acquitting the respondents of uttering a false
20 document.*

We have already held on ground one that exhibit P2 was a false document and that A2 who uttered it at the land Registry uttered a false document. We therefore find this ground valid.

25 Accordingly we uphold the decision of the trial Court on this count and we set aside the decision of the appellate Court. This ground therefore succeeds.

Ground 3

NSUBUGA GERALD and ANGELO MUWANGA with intent to defraud obtained from the Registrar of Titles Kampala Office a Land Title in respect of Block 185, Plot 575 in the names of Gerald Nsubuga under Instrument No. K'LA 124 743 registered on 24-4-1987, by falsely pretending that they had

5 bought the land from Rebecca K. Musoke and Kaddu whereas not.”

It appears clearly to us that the property said to have been obtained from the Registrar of Titles by false pretences was “a land title in respect of Block 185 Plot 575”. It was not the land itself as the learned appellate Judge seems to suggest in his Judgment.

10 With due respect to the learned appellate Judge, we find that a land title, as a document has value. It is paid for, before one can obtain it. When it gets stolen, lost or destroyed an expensive and elaborate process has to be complied with before a replacement can be obtained. It can be lodged in a bank or elsewhere as an equitable security for credit even without registration of a mortgage.

15 We accordingly find that a land title as a document has value and constitutes “property” within the meaning of Sections 304 and 305 of the Penal Code Act. We therefore uphold this ground.

Ground 4

The Hon. Learned appellate Judge erred in law when he acquitted the respondents of the offence of conspiracy to commit a felony.

20 Counsel submitted that the appellate Judge erred when he acquitted the respondents of the offence of conspiracy to commit a felony. That there was over whelming evidence to prove this offence, as a common intention had been proved.

In respect of this ground that relates to count 5; conspiracy to commit a felony the learned appellate Judge had this to say at page 17 of his Judgment:

25 ***“The appellants complain that the learned Chief Magistrate erred in law and fact when she convicted them of conspiracy to commit a felony.***

Learned counsel for the appellants submitted that since the said felony in count 4 - which is obtaining goods by false pretence cannot stand in law in this case, then the charge of conspiracy in count 5 must fail. Learned State Counsel referred me to sections 19 and 20 the PCA which deal with common intention/purpose.

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In view of my finding in ground 8 that A1 was wrongly convicted in count 4, it follows that the conviction in count 5 which is the subject of ground 9 of the memo of appeal is hereby quashed and the sentences of 2 years for A1 and 3 years imprisonment for A2 are hereby set aside. Ground 9 succeeds.”

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We have already found that the learned trial Judge erred when he quashed the conviction of the 1st appellant in respect of count 4, obtaining goods by false pretences. We have reinstated the conviction and sentence.

15 We agree with the findings of fact in respect of count 5 as set out by the learned Chief Magistrate, at page 7 of his Judgment, when she stated as follows:-

“On the question of conspiracy to commit a felony- i.e. obtaining a land title by presenting a forged transfer form, both accused person were aware that the transfer form they were presenting was forged. They were aware that they had not bought the land as they were purporting. The evidence shows the accused acted in consort from the very begging- they themselves claim they went together to make the payments and to have tax assessments. Their minds were clearly in agreement in the commission of this offence.

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A2 is the one who even took the title to A1 after it was processed. This is sufficient basis for a finding that they conspired to obtain the land by presenting a forged transfer.”

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We set aside the decision of the appellate court in respect of count 4 and we reinstate the decision of the trial Magistrate. The conviction of the 1st appellant on count 4, obtaining property by false pretences is reinstated and so is the sentence of 3 years imprisonment.

5 In the result, this appeal substantially fails. The cross appeal substantially succeeds.

We hereby set aside the Judgment of the High Court and substitute it with this Judgment. The appellants are to serve the sentences and to pay compensation as per sentences and orders set out in the Judgment of this Court, unless where such sentences and orders have been served in full or
10 complied with by the date of delivery of this Judgment.

Dated at Kampala this 23rd day of September 2015.

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HON. A.S NSHIMYE
JUSTICE OF APPEAL

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HON. REMMY KASULE
JUSTICE OF APPEAL

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HON. KENNETH KAKURU

JUSTICE OF APPEAL