

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CR-CN-0028-2021
(ARISING FROM CRIMINAL CASE NO. 01-CR-CO00312-2020
KML CRB NO.143/2018)

UGANDA:.....:APPELLANT

VERSUS

BISHOP DANIEL MUWANGA :.....:RESPONDENT

Criminal Appeal-

Held: *All Grounds of Appeal Succeed. The Judgement and Orders of Acquittal of the Respondent are hereby set aside by this Honorable Court and the Respondent is Found Guilty on both Counts as charged on the strength of the Prosecution's Evidence and Convicted Accordingly.*

BEFORE: HON JUSTICE DR. NABISINDE N WINIFRED

JUDGMENT ON APPEAL

The Director of Public Prosecutions (***hereinafter referred to as the Appellant***) being dissatisfied with and aggrieved over the Judgement and Orders of Her Worship Kyomuhangi Happy Ann, a Magistrate Grade One at the Magistrates 's Court of Jinja delivered on the 6th August 2010 filed a Notice of Appeal in this Honorable Court on the 22.12. 2020 on the following grounds:-

1. That the learned Trial Magistrate erred in law and in fact when she failed to evaluate the evidence adduced in court so as to come to a proper decision.
2. That the learned Trial Magistrate erred in law and fact when she disregarded the evidence of the appellant especially that of the handwriting expert and went ahead to acquit the respondent.
3. That the acquittal of the Respondent occasioned a miscarriage of justice.
4. That the Appellant deserves a right to amend the Memorandum of Appeal after receiving a copy of the Judgement and proceedings of the lower court.

They prayed that the Appeal be allowed and the decision of the lower court be set aside with costs.

BRIEF FACTS

The brief facts according to learned counsel for the Respondent are that the Respondent was charged and tried before the Jinja Grade 1 Court Magistrate Her Worship Kyomuhangi Happy Ann vide **Criminal Case No.312 of 2020** on two Counts of: **Forgery Contrary to Section 342 of the Penal Code Act (as amended)** and **Count of Uttering a False document Contrary to Section 351 of the Penal Code Act (as amended)**.

That upon full hearing of the case, the learned Trial Magistrate acquitted the Respondent on both Counts upon reaching the conclusion that Prosecution failed to produce sufficient evidence to implicate the accused (Respondent) and upon which decision this Appeal was lodged before this Honorable Court vide **Criminal Appeal No.28 of 2021**. By its Memorandum of Appeal, the Appellant challenged the Lower Court Judgement on the afore stated grounds.

I have analyzed the facts leading to this Appeal and I agree with above brief background.

REPRESENTATION

When this Appeal was put before me, the Appellant was represented by learned State Counsel Orogot Pamela, Senior State Attorney, from the Directorate of Public Prosecutions, while the Respondent was represented by M/S. Okoth Osilo & Co. Advocates. Both sides were directed to file written submissions and they complied. I have considered them in this Judgement.

THE LAW

In all criminal trials, the prosecution has the upshifting burden of proving all the ingredients of the offence with which the accused is charged and his guilt beyond reasonable doubt. This burden does not shift to the accused except in a few statutory cases, but this is not one of those exceptions. The prosecution must succeed on the strength of its own evidence and not because of the weaknesses in the accused's defense.

The weakness of the defence or lies told by the accused shall not be a basis for convicting the accused. **See: (I) Woolimington vs. D.P.P. (1965) A.C. 462; Okethi Okale & others vs. Uganda (1965) EA 555 and Ssekitoleko v. Uganda [1967] EA 531.**

By their plea of not guilty, the accused persons put in issue each and every essential ingredient of the offence with which they were charged with and the

prosecution has the onus to prove each of the ingredients beyond reasonable doubt, however, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt; the standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility, but not any probability that the accused is innocent: **see Miller v. Minister of Pensions [1947] 2 ALL ER 372**).

Learned counsel for the Appellant submitted on the duty of a first appellate court that this being an appeal, this court has a duty to reappraise the evidence as a whole. That it is settled law that it is the duty of the Appellate Court to re-evaluate the evidence on record and come up with its own findings and conclusions, but without totally disregarding the judgement appealed against. They relied on the case of **Kifamunte Henry vs Uganda S.C.C.A No.10/1997**.

In reply, learned counsel for the Respondent submitted that while the Appellant had properly stated the law and duty of this court to re-evaluate evidence on record and come up with its own findings and conclusions.

I agree with the position of the law as submitted by both learned counsel and emphasize that a court of first appeal instance has a duty to judicially re-evaluate the evidence on record and come to its own conclusion on the evidence adduced before by both sides to the case before coming to a decision on the controversies before it. The duty of the 1st appellate court is well elaborated in the decided cases of **Muwonge Peter v Musonge Moses Musa CACA77/211; Pandya v R [1957] E.A 336; Charles Bitwire v Uganda SCCA 23/1995; Kifamunte Henry V Uganda SCCA No.10/1997**.

The first appellate court has a duty to subject the evidence on record to a fresh and exhaustive scrutiny and to come to its own conclusion on the evidence on record bearing in mind that it did not have the opportunity to observe the witnesses' demeanour during the trial.

A failure to re-evaluate the evidence of the lower court record is an error in law and fact that will usually result in the decision being overturned on appeal. See **Pandya v R [1957] E.A 336** and **Charles Bitwire v Uganda S.C.C.A 23/1995**.

Further, the appellate Court can only interfere with and or alter the findings of the lower /trial court in instances where misdirection to law or fact or an error by the lower court goes to the root of the matter and occasioned a miscarriage of justice. See **Kifamunte Henry vs Uganda S.C.C.A No.10/1997**.

Finally, errors, omissions and irregularities that do not occasion a miscarriage of justice are too minor to prompt the appellate court to overturn a lower court's decision. **See Festo Androa & Anor vs Uganda SCCA 1/1998.**

RESOLUTION OF THE GROUNDS IN THE APPEAL

Ground 1: The learned Trial Magistrate erred in law and in fact when she failed to evaluate the evidence adduced in court so as to come to a proper decision.

It was submitted by learned counsel for the Appellant that the Respondent was wrongfully acquitted and should have been convicted. That as a result, adopt a joint method of resolution for all the grounds.

They submitted that on **page 4 of the court proceedings line 3-6**, PW1 testified that *"I gave thee certificate of Title to my son Peter so he took it to the accused. He told me that we need to do something on the land so the loan did not succeed. So I asked him to return the certificate of Title but he didn't return the certificate of title. So I made a search in the Lands and realized he had transferred the land into his names"*.

Further, **on page 4 of the court record of proceedings line 15 to 17, PW1** states, *"at police I said I have never ever signed transfers. Police took my sample signatures and took them to the handwriting expert. The report from the experts proved that the signature had been forged."*

That on **page 4 line 28 to 29 of the court record of proceedings, PW1** states *"under paragraph 5 its true I signed documents of bank thinking that I was signing bank documents but on making a search, realized I had been deceived."*

Page 5 line 8 to 9, PW1 states*"It's a transfer form. I have never seen this document. The signature thereon is not mine."*

They submitted that this is corroborated by the evidence of the handwriting expert that indeed **PW1** did not sign the transfer forms that were in the possession of the respondent.

That **Page 11 line 3 to 4** *"in my opinion it is likely that the author of sample signatures on exhibit "B", "C" "D" did not sign the questioned signature of Exhibit "A".*

They submitted that further, that the questioned documents and sample signature are properly described on **Page 10 line 13 to 17** as follows;

Exhibit A (Transfer Form Bloc 3 Plot 8/9), **Exhibit “B”** specimen signatures of Rev. Irongo Charles, **Exhibit “C”** original Driving Permit of **Charles Irongo**, **Exhibit “D”** Original National Identity Card of **Charles Irongo**.

Further, that on **Page 12 line 2 to 6, PW6** the Expert states in Re-examination *“Time lag affects handwriting, there are always natural variations because of the movement of the hand, writing surface also affect several years there are changes but there are things that remain e.g. skill, image, connectivity and it depends on the write because some people even after five years they remain consistent.”*

They further submitted that this formed prosecution’s case; and affirmed that he was rightly charged with the two counts of Forgery and Uttering False Documents. That for the count of **Forgery Contrary to Section 345 of the Penal Code Act**, the ingredients of the offence of forgery are laid out in **Uganda vs. Obur Ronald & 3 ors HCCA No. 007/2019** to include;

1. The making of a false document.
2. With intent to defraud or deceive.
3. The document was made by the accused.

As to whether a false document was made, they added that “A document” is “false” if it purports:- *“to have been made in the form in which it is made by a person who did not in fact make it in that form; or to have been made in the form in which it is made on the authority of a person who did not in fact authorize its making in that form; or to have been made in the terms in which it is made by a person who did not in fact make it on those terms”*; as per **Uganda vs. Obur Ronald (Supra) PG7**.

They argued that in the instant case **PW1** testified that he did not sign the transfer forms which the handwriting expert marked as **Exhibit A**. That **on page 5 line 10 of the court proceedings**, the accused tendered in the transfer form as **DEX2**.

Further, that **on page 11, line 3 to 4 of the record of proceedings, PW4** the handwriting expert stated that he analyzed the handwriting and signature and they were not authored by **PW1**. They relied on **Section 45 of the Evidence Act**, which refer to opinions as to handwriting as adducible evidence relevant in guiding court to form an opinion and submitted that in order to prove forgery, the original document is deemed as the best evidence; and in this case, the Transfer Form in question was adduced by the accused in court and the Appellant submits that the handwriting experts’ opinion falls within this section.

As to whether the document was made with intent to defraud or deceive, they submitted that the intent to deceive has been explained in a number of cases.

“To deceive is ...to induce a man to believe that a thing is true which is false, and which the person practicing the deceit: it is by deceit to induce a man to act to his injury. More falsely it may be put, that to deceive is by false hood to induce a state of mind; to defraud is by deceit to induce a course of action” (see R v Bussey (1931) 22 Cr. App R 160 at 162; see also Attorney General Reference No. 2 of 1980 (1981) 72 Cr. App R 64; (1981) 1 ALLER 493 and R v Turner (1981) 72 Cr. App R 117).

They therefore submitted that the intention to deceive commonly arises as the way to trick people into parting with money or some other property. That in the instant case, **PW1** testifies **on page 35 line 23 to 29 of the court proceeding** that he acted upon a misrepresentation. That he signed some documents presented by the accused to acquire a loan and not transfer title of his land.

That on **page 3 of the Judgment line 19 to 21 of the record of proceedings,** it is clearly referred to by G1 Magistrate when she refers to this representation upon which **PW1** das to have acted upon. In corroboration **on page 5 of the record of proceedings, PW3** states that the title had been given to the respondent to secure a loan which did not materialize. They asked him to return it but discovered he had transferred the title into his names.

Upon the above, they submitted that there was deceit by the Respondent in order to influence **PW1** to transfer title to him unknowingly.

As to whether the false document was made by the accused, they submitted that a person “makes” a document if he or she is ultimately response responsible for it coming into existence; they submitted that **PW1** testified that the accused brought him documents claiming it is required of him to sign them to enable the accused process a loan for business. That **PW1** denied ever having signed Transfer Form that the accused presented in court; and it’s the Appellant’s submission that Respondent who was in possession of the Transfer Form made them.

In reply, learned counsel for the Respondent submitted that the submissions of the Appellant didn’t distinguish, addressed or proved the merits of the three grounds as raised on Appeal and that the general submission made by counsel for the Appellant doesn’t suffice to prove the said grounds of Appeal to the

required standard of proof warranting to set aside the lower court judgment; and prayed that the lower court judgement be upheld.

In respect to Ground 1, they argued that this ground lacks merit since apart from being too general, it does point to any evidence on record that was not considered or evaluated; and on the contrary, it is very clear upon perusing the Trial Magistrate's judgement that apart from properly guiding herself and stating the burden of proof, the presumption of innocence of accused and pointing out the essential ingredients of the offences charged as seen **on pages 1-2 of the judgment**, the Learned Trial Magistrate also went ahead to meticulously review and exhaustively evaluate the evidence of both the complainant/prosecution making mention of evidence of **PW1, PW2, PW3 and PW4** as well as the accused's evidence comprising of **DW1, DW2, DW3 and DW4** stating the relevance and evidential value of each to the offences charged as seen in her judgement.

They submitted that the Learned Trial Magistrate labored in her judgement to consider the weight of evidence as adduced by the Appellant/Prosecution against that of the accused. Particularly in **paragraph 2 ,3,4 and 5 on page 5**, the learned Trial Magistrate Judgement where she clearly contends with the contradictions, inconsistencies and several questions raised especially by the inconsistent evidence of the prosecution/Appellant like where PW1 first denies but again admits to signing the impugned transfer form on purported mistaken belief that it was a bank loan document (albeit himself confirming to court that he is an educated and literate person) yet the expert opinion of his fourth witness (**PW4**) indicate that he didn't, why Appellants counsel Muzuusa who also appended his attestation stamp and signature on the Transfer Form was never called as a witness by the Prosecution and **PW4'S** evidence that time that time lag and kind of surface used also vary the signature on the document before weighing it against the evidence of the Defence and her conclusion in the judgement she stated *"...I find that prosecution failed to produce evidence strong enough to implicate the accused and I accordingly acquit him on both counts"*.

They therefore concluded that the first ground of Appeal that the Learned Trial Magistrate failed to evaluate the evidence adduced in court is utterly false and inconsistent.

COUNT 2: UTTERING FALSE DOCUMENTS C/S 351 OF THE PCA

In respect of the second count, the Appellants submitted that the ingredients of the offence of Uttering False Documents are laid out in **Kazibwe Elisha & Anor v Uganda HCCA No. 013/2019** where it was held that:-

“For one to be convicted of the offence of uttering a false document, the prosecution has to prove that the accused knowingly and fraudulently uttered a false document. The prosecution has to prove that the accused knew that the document was false and presented the same to be relied upon.”

They relied on **Black’s Law Dictionary 4th Edition** which defines the word “utter” to mean, “to offer, whether accepted or not, a forged instructive, with the representation, by words or actions, that the same is genuine”.

They submitted that in the instant case, the Appellant’s evidence is that the respondent forged Transfer Forms which were used to effect a transfer of land title from **PW1** into the Respondent’s name. That **PW1** testified that he was the owner of the land in question that he never signed Transfer Forms used to effect changes on the Certificate of Title **on Pg 3 line 21 to 23 of the record of proceedings**.

That **PW4** the Handwriting Expert testified that he examined signatures belonging to **PW1** and those on the Transfer Form and concluded that **PW1** who was the author of the sample signatures given to him did not sign the questioned signature on exhibit “A”- being the Transfer Form **on page 11 of the record of proceedings line 3 to 5**.

That **PW3 D/CPL Teru John William** testified that he concluded investigations by retrieving a certified copy of the Transfer Form from the Jinja District Land Office and secured **PW1’s** sample signatures from his Driving Permit and other documents for expert examination and it was established that the signature on the transfer forms were not similar to that of **PW1** as per **page 7 lines 16 to 20**.

They thus submitted that the false document that effected the new land title is the Transfer Form and it was false because it had forged signatures of **PW1**.

Further, that the Respondent was aware that it was a false document; and that here, prosecution had to show that the document (transfer form) was fraudulent through showing that the Respondent had dishonestly induced the complainant to part with some property by rightly relying on a representation by the Respondent which prosecution did on presentation.

That on **page 3 line 28/29 of the record of proceedings**, *“Then the accused now brought a project of cows. He said Bank of Africa would give us a loan. He told me that the Bank would need security of land title. I discussed with the family and we agreed to give accused the said title”*; and further **on page 35 line 23 to 29 record of proceedings** *“under paragraph 6; its true I signed documents of*

bank thinking that I was signing documents, but on making a search, I realized I had been deceived.”

They argued that all evidence pointed to the fact that the representation of acquiring a loan that the respondent presented to the complainant was false in that the Respondent knew that was the only way the actual owner of the property (**PW1**) would have handed over his land title to him.

That it is common ground in this appeal that it is on the basis of a representation made by the Respondent that **PW1** parted with his land title; and relied on the case of **Sinnasamy Selvanayagam v R (1951) AC 83 at Pg 87** where it was held that *“intention which is a state of mind, can never be proved as a fact, it can only be inferred from other facts which are proved fraudulent intent is rarely susceptible to direct, proof and must instead be establish by legitimate inference”*.

They therefore concluded that by stating that the facts when pieced together are incompatible with the innocence of the Respondent and prayed that this appellate court finds merit in this matter and quashes the decision of the lower court and finds the respondent guilty.

In respect of Ground 2, the Respondents replied that the Learned Trial Magistrate took into account all evidence of the Prosecution/Appellant particularly the expert opinion of **PW4** as seen **on pages 5,6,7 and 8 of her judgment** acknowledging the content of his written opinion , findings, samples and the additional evidence **during cross examination** that time lag or kind of surface can affect handwriting and also that there are natural variations that could be caused by movement of her hand, surface and also several years as well captured in the **2nd in the 2nd last paragraph on page 6 of the lower court Judgment**.

That **on page 7 in the Judgment**, she guided herself on the law relating to admissibility and reliance on expert opinion and relied on the authority **Iwa Richard Okenty vs Abol George Okot HCMA No.63 of 2012** where Justice Mubiru held that *“an expert opinion can be rejected if it is inconsistent with the rest of the evidence available to court where the inconsistency between the 2 is so great as to falsify the opinion”*.

Further, that even though the learned Trial Magistrate rejected the expert opinion against the other evidence as alluded to by the complainant himself as having signed the Transfer Form through his own sworn and duly commissioned Affidavit in **Misc. Appl. No.350 of 2017** and **Plaint H.CCS No.144 of 2017** which was filed by the same complainant against the Respondent including his

Passport Photo as attached to the Transfer Form, that the Prosecution/Appellant never adduced any other document relating or confirming his bank loan allegations, No Power of Attorney authorizing accused to process a loan since the Title belonged to the complainant, why there was no complaint of Counsel Muzuusa's signature as attesting advocate on impugned transfer or why Appellant did not call him as a witness.

That **DW3** while mediating the dispute between the parties at Police, the complainant admitted to having signed the Transfers in his favour, but only treated it as a criminal complaint due the pressure that had mounted on him by his own family which shows complaint was lodged in 2018 years after the alleged forgery state to have happened on 13/8/2016 as per the Charge Sheet.

That the Learned Trial Magistrate therefor discharged the Expert Opinion upon considering other compelling circumstances with the authority ***Iwa Richard (supra)***, and so didn't err in law and fact in reaching the verdict pronounced.

Turning to **Ground 3**, learned Counsel for the Respondent submitted that the evidence produced by the Appellant/Prosecution against the Respondent was insufficient and falls below the standard of proof in criminal cases, the Trial Magistrate acquit the Respondent who was wrongly accused.

That it was also by the Respondent evidence which wasn't denied by the prosecution that there was a pending **Civil Suit No.114 of 2014** filed earlier by the complainant against the accused over the same facts and dismissing the criminal case leaves the complainant with the opportunity to pursue the Civil matter; and that the Appellant has not proved a miscarriage of justice as a result of the acquittal. They therefore prayed that the ground fail and the Appeal be dismissed for want of merit and the lower court judgement be upheld.

RESOLVING THE GROUNDS IN THIS APPEAL

In resolving all the grounds in this Appeal, I have found that they are closely interrelated and all point to failure by the Trial Court to appreciate, analyze and evaluate all the evidence led before it. I have therefore found it more coherent to exercise my jurisdiction as a first Appellate Court by reevaluating all the evidence as a vailed to me on the certified record of proceedings and resolve all of them concurrently.

In doing so, I have first summarized all the evidence led before the Trial Court as availed to on the certified record of proceedings as follows:-

The first prosecution witness was **Reverend Charles Irongo, a male adult aged 61 years old of the Church of Uganda (hereinafter referred to as PW1)**. He knew the accused as his friend who is a Pastor and Bishop; and testified that he bought land at Butiki Matala in 2005, 2006 from Sulaimani Munaaba, Abdul Noor Kagalila and Hajji Magoola. That the land is about 3 1/2 acres, he had a Certificate of Title which he got in 2005, but right now, had a photocopy as the original is with the accused. That when he secured the land, they developed it by cultivation and later built a house. That he was in a program of NAADS with the accused, and then the accused told him there was a program of NAADS to supply seedlings and he agreed to work with the accused.

That they were to get graft oranges and coffee and supply farmers until the project ended. That the accused then brought a project of cows and said Bank of Africa would give them a loan and would need security of a land title. That he discussed with his family and they agreed to give the accused the Certificate of Title in 2016.

Further, that he gave the Certificate of Title to his son Peter, so he took it to the accused. That he told him they needed to do something on the land, so the loan did not succeed, so he asked him to return the Certificate of Title but he didn't. That he made a search in the lands and realized he had transferred the land into his names, and that he had a search Certificate.

The **State** prayed to tender in the Search Certificate, the accused had no objection and Court it admitted as **PEX1**.

That **PW1** after realizing reported to the LC1, then Police and finally the case was brought to court. That at Police, he said he had never signed transfers, Police took his sample signatures to the handwriting expert and the Report from the handwriting experts proved that the signature had been forged. That he wanted his Certificate of Title and the accused should vacate his land, transfer it into his names and court should punish him.

During cross examination, PW1 answered that this is not the first time the case comes up, there is a Civil Case in High Court. He knew the document and it bore his signature and that it is an affidavit in support of an application sworn by himself. That paragraph 5 reads that "*I deposited the land title with you I took it to the bank*". That Para. 6 that its true he signed the documents of bank thinking that he was signing bank documents but on making a search, he realized he had been deceived.

The **Accused** prayed to tender in the application of **PW1, State** had no objection and **Court** admitted it as **DEX1**.

In questions by court, PW1 answered that he had a Diploma in Theology, can read and write and can tell the difference between a Certificate of Title and bank loan documents. The accused handed over another document which **PW1** identified as Transfer Form and he responded that he has never seen that document and the signature on it is not his.

The **Accused** prayed to tender in the application of **PW1, State** had no objection and **Court** admitted it as **DEX2**.

The second prosecution witness was **Edith Irongo, a female adult aged 56 years old resident of Butiki Matala, a farmer /rearing animals (hereinafter referred to as PW2)**. She testified that **PW1** was her husband and she knew the accused as their friend. That the accused came to their home, they used to do a nursery with him of grafting mangoes etc.

That the accused advised them to secure a loan in Bank of Africa, they had a family meeting and agreed to give him a Certificate of Title which they handed to Peter Mwesigwa their son who took it to him. That the loan was not acquired, he told them the bank had refused to give him a loan, and then they asked him to return the Certificate of Title.

Further, that they went and made a search and found that the Certificate of Title had been changed to the accused's names and they reported to LC1, then Police and finally to court. That it is the accused who is utilizing the land.

During cross examination, PW2 answered that she is telling the truth and had come to testify that the accused changed the certificate without their knowledge. She confirmed that the signature is not for her husband. That the one who constructed the house on the land is the accused but they also put some materials, that there are 3 rooms. That they had a joint nursery business, but it's her husband who knew how much it was worth. That the case has been taken to different places at Butiki, they went to CLO Mpanuka, didn't get redress about they said they should settle, they were sent to Civil and Criminal Court. That she has never been to the Land Tribunal and only had their Criminal Case, the one in court.

The third prosecution witness was **No. 30322 Det. CPL Teru John William, a male adult Police Officer aged 50 years old attached to Kiira Police Headquarters, resident of Jinja Main Police barracks (hereinafter referred**

to as PW3). He was the Investigation Officer in this case and testified that he was allocated to investigate the matter where the complainant was Irongo Charles and the complaint was that the accused forged a Transfer Form.

That he visited the land where it is situate and found seedlings being planted, there was a structure for the workers, irrigation equipment and drew a sketch plan.

That **PW3** also wrote some statements from persons he found there and summoned the accused who came. That he moved to the land Office, received a certified copy of the Transfer Form and then called the complainant and secured his specimen signatures and his other documents e.g. driving permit and took it to the handwriting expert.

That when the results came, the signature on the Transfer Form was found to be forged, so he preferred a charge of Forgery and Uttering False Statements and referred the matter to state.

During cross examination, PW3 answered that he has been an I/O for about 15 years, went to the accused's farm and found some workers who were working for both the accused, complainant. That it was Walusansa Samuel and he found the owner of the seedlings was both of them and he had inquired from both and they told him so.

He read a part of the statement and confirmed that the part of joint ownership was not included. That at lands he secured a certified copy of the Transfer, took the sign specimen to the expert in Kampala and the Report is on file and Court will decide if he is telling the truth.

The fourth prosecution witness was **Sebuwufu Elisa, a male adult aged 47 years old, Superintendent of Police Officer and Examiner of Questioned Documents now training at Senior Command Bwebajja, previously attached to Forensic Directorate, resident of Namgoma village, Nsangi Sub County Wakiso District (hereinafter referred to as PW4).** He presented his qualifications as Masters of Science in Document Analysis 2012, obtained from University of Central Lancashire-UK, Bachelor of Science in Quantitative Economics MUK 2000, and Certificate of Fraudulent Document Recognition 2010 by American State Department, and Certificate in Introduction to Forensic Document Examination 2009 by Police Training School Kibuli; and that he had examined documents since 2008.

PW4 identified **PF 17A**, and responded that it details all documents for examination and that it came from Mafubira Police File CRB 143/2018 received on 27/02/2019 at the laboratory. He was required to ascertain whether the signature on exhibit “A” marked C tally with the signature on exhibit marked “B”. There were additional exhibits as specimen on his Driving Permit and National Identity Card where he was required to examine signature on exhibit “C” and B to establish whether they tally with signature on exhibit “B”.

The **State** prayed to tender in the Search Certificate, the **Accused** had no objection and Court it admitted as **PEX1**.

Further, that the exhibits were received by Police Officer and handed over to him as head of Forensic Department; he examined the documents and formed an opinion and then handed them back to another examiner Claire Hashakimana who also formed an opinion. That he compiled a report and signed it and forwarded it and then took it to the Director Forensic Services, so there is a joint opinion.

That exhibit “A” (Transfer Form—Block 8/9 attributed to complainant, dated 13/8/16. Exhibit “B” Specimen Signatures of Rev. Irongo Charles, Exhibit “C” Original Driving Permit of Charles Irongo, exhibit “D” Original National Identify Card of Charles Irongo.

The **State** prayed to tender in the search certificate, the accused had no objection and Court admitted it as **PEX2 collectively**.

PW4 explained that it is dated 12/8/2020, addressed to OC CID Mafubira Police station forwarded to Director Head of Forensic Department.

“Findings

- 1. Questioned signature on exhibit “A” (Transfer Form) fundamentally different from sample signatures on exhibit **B, C & D** in connecting strokes, the ending stroke, the formation of shapes, skill designed matter of execution.*
- 2. In my opinion it is likely that the author of sample signatures on exhibit “**B**”, “**C**” “**D**” did not sign the questioned signature of exhibit “A”.*
- 3. I signed the report myself and Claire Hashakimana”.*

The **State** prayed to tender the documents in, **the Accused** had no objection and Court it admitted as **PEX3**.

The Report is dated 14/08/2020.

During cross examination, PW4 answered that that is his opinion, and is a scientific report. That for handwriting analysis, 2 times are needed to come up with an examination. He was not sure of the exactly collected samples and had 3 samples 'B', 'C' & 'D'. That the date is not indicated on b (sample signatures); 'C' (driving permit was signed on the date of signing is not indicated, but it is valued from 19/9/2016-18/July/2019. That the impugned signature was on 13/8/2016 NID (Document 'D') was not dated but expiring 2025. Document 'C' Driving Permit valid, not dated though valid from July 2016-July 2019. Document 'A' is not dated. That time lag has an effect on handwriting; PW4 had proof of his qualifications, Copy of Masters of Science in Qualitative Economics and all Certificates, but didn't have any other information about the case because it is not his duty and that he bases his analysis on observations.

In reexamination, PW4 answered that time lag has an effect on handwriting, there are always natural variations because of the movement of the hand, writing surface also after years there are changes, but there are things that remain e.g. skill, image, connectivity and it depends on the writer because some people even after 5 years they remain consistent.

The Trial Court found a Prima Facie case against the accused person and put him on his defence.

In his defence, Bishop Daniel Muwanga a male adult aged 58 years, Resident of Kimaka Village, Kimaka Parish, Mpumudde Jinja District (hereinafter referred to as DW1) confirmed that he knew the complainant for a longtime as a friend since the year 1980, they went to school together and served the Church together.

He testified that in 2011, he had a Radio Talk Show after which he met **PW1** on growing Candlernut (*Kabaka Anjagala*) trees. That **PW1** got interested and asked **DW1** how to become a Director of the Company; and as friends **DW1** introduced **PW1** to the Directors and **PW1** became a Director in the project and offered his land, which was a *kibanja* then situate in Butiki Matala, Mafubibira Jinja District to the project, but the company closed after one year and everyone took their shares. That **PW1** took his land and by November 2011 everyone took what had been theirs.

Further, that in December 2011, **PW1** came to **DW1** in person and said that since the Company hadn't worked, he wanted to sell his land and pay fees for his children; and that if **DW1** could sell it immediately, it could cater for his children's fees. That **PW1** handed over the title to **DW1** to pay fees for **PW1's** children- Daniel Irongo, Peter Mwesigwa, William and Mary.

PW1 Agreed that **DW1** pays fees termly and at the end construct a house for the family because he said he said he was about to retire and he had no retirement home. That in 4 years, **DW1** paid fees and constructed him a house and the titles came out in 2015.

That in 2015, after **PW1** getting a Certificate of Title, he gave it to his son Peter Mwesigwa and he bought it to **DW1's** house because he was about to go back to school and needed money. That **DW1** secured loans to service the loans including getting a loan in **PW1's** name which he serviced and that he had proof of that. That in 2015, **DW1** started construction of the house in March, 2016 the house was completed. That the Company that had constructed the house called Berge tendered to construct the houses and it did. He prayed to tender the company bidding document, which was tendered as **D1D1**.

That on the 13/11/2016, **DW1** asked **PW1** if he had any claim and he said 'no'. He asked him if there was a no reason to why he wouldn't transfer the land. That that very day, **PW1** went to his house in the presence of **DW1**, Engineer Herbert Sempera and Ngobi Nafutali, **DW1** filled the forms and **PW1** wrote his name. That **DW1** invited court to identify two different handwritings on the form **DEX2** and prayed to tender in the certified copy of the transfer, but interest was on different handwritings. It was tendered in as **DEX 3**.

That **PW1** called his lawyer Muzuusa to witness the transfer, he took the forms, **DW1** paid 150,000/= and returned them and signed. That 4-5 months later in the year 2016, the Certificate of Title came out in **DW1's** names. That the Certificate of Title came out on 28/11/2016, the transfer came out on 23/11/2016 and one year later, on 27/11/2016, a case was instituted against the **DW1** for forgery.

Further, that he has been in possession since December 2011 to 2015 when the land was registered to date. *(Court observed that the witness broke down and wept).*

Again, that in November 2017, LC1 and OC Mafubira were reported to **PW1's** children made claims on the land and **DW1** was invited at Police Mafubira. **PW1** told the OC that the children were trespassing on **DW1's** land. That **PW1** told the LC1 and OC Station four days later, they went to the Community Liaison Officer (CLO) CPS where **PW1** told CLO that he was under pressure from the family, but he had transferred the land willingly. That **PW1** referred the matter to land inquiry commission and many other offices. That in High Court, **PW1** sued **DW1** vide **Civil Suit No.144/2017**, where he ably confessed that he signed himself but was under misrepresentation that he was signing bank documents. The Complaint was tendered in at paragraph 4 as **DEX3**.

During Cross-examination, DW1 answered that the consideration for the land was in kind. That he was supposed to pay fees for his children and construct **PW1** a house. That the two families, for **DW1** and **PW1** were in the know and that **PW1's** children lived in **DW1's** house. That **DW1** paid for their upkeep at school and even drove them to school himself. That Peter Mwesigwa was at Darlington University, he paid for his Diploma in Statistics in Tanzania. That in a year he paid 5000 USD, which school fees he didn't keep the receipts but he has the receipts of the house. That Dan Irongo had finished First degree and **DW1** had paid for two semesters of 1.5 million in Makerere University, but he later got a scholarship. That **PW1** asked **DW1** to pay for his son's marriage and **DW1** did so and that he paid 4 million for introduction and 5 million for the wedding. That Mariam had finished a diploma so **DW1** paid for two Years University at "MUB" and for the two years, Mariam lived in **DW1's** house. That she would even collect fees and Paid university fees for her brothers.

DW1 further answered that Mariam had been admitted in MUBS, was failing after one semester so **DW1's** wife got a loan and they completed her fees. That she also lived in **DW1's** house, that she fell sick and almost died but **DW1** treated her because he felt like she was their child. That the house he constructed is the one **PW1** is living in now. That the house is on a different suit land from the land he bought. That for the Certificate of Title, **DW1** paid 6 million to him but that since the titles were in his names, the receipts were in **PW1** names and he was in possession of them. That the business **DW1** had with **PW1** was in 2014 December and 2015. That they never got a loan with **PW1** to start a nursery business.

Finally, that counsel Muzuusa didn't see them signing , but rather he went with the documents to his chambers and also witnessed in their absence. He met them when **DW1** and **PW1** has already signed the Transfer Forms.

The second defence witness was **Sempera Herbert, a male adult aged 51 years, resident of Buwuma Village, Butagaya Jinja (hereinafter referred to as DW1)**. He testified that he knows the **PW1** and **DW1**. That on a certain date **DW1** invited him to be present on the date of transfer to ascertain whether the house was lacking anything so that in case of anything, **DW2** would do it. That **DW2** went to the accused's home in Lumaka and found **DW1** seated with Nafuti Ngobi. That **DW1** gave Nafutali Ngobi Transfer Forms to go and photocopy.

Later he returned and **PW1** and **DW1** filled the forms and they both signed. That **DW2** witnessed the two signing and after signing **DW1** gave **PW1** transport back to his home. That even before witnessing, the two parties signing, **DW2** knew the two as friends, **DW1** had introduced to him **PW1** as his brother and that they had agreed on certain terms and told **PW1** to tell him the kind of house he

wanted. That **PW1** described the house he wanted and that **DW2** sketched as **PW1** told **DW2** to add garage.

Further, that he was the one who built **PW1's** house under his Company Berge Consult Ltd. That the house was constructed without undue delay because **PW1** had a function. That they worked the entire night to finish on time, then the following two days, there was a house warming function and the graduation of **PW1's** children. That **DW2** showed court the security of construction of the house. That the balance was totaled to 131 million

During cross-examination, DW2 answered that he witnessed **PW1** and **DW1** signing the Transfer Forms. That he constructed the house at Butiki Matala, a few distance from the land in question and by the time he arrived, Ngobi Nafutali was already there. That he has a Certificate of Registration by Berge Consult Company and that it was **DW1** paying for the construction of the house and that he was paying in cash. That **DW2** was still demanding some money on the construction and before **PW1** moved into the house, he was staying in Muguluka at the Church where he served and **DW2** used to pick **DW1** from his home to **PW1's** home.

The third defence witness was **Muguluka Adhallah, Assistant AAIP attached to CPS Jinja as a Community Liaison Officer (hereinafter referred to as DW3)**. He testified that he knew the accused and the complainant; and that one day around 2017, he received the son and daughter of the complainant. That they were referred to his office and reported a matter that the accused grabbed their father's land. That he asked them to bring their father which they did. That **DW3** interacted with the complainant without the children and he asked him to tell him the truth. That the complainant told **DW3** that *"...I want my tittle I transferred in the name of the accused to be transferred back into my names and he vacates the land immediately..."*

Further, that the complainant told him that he transferred the land to accused's name to get a loan to make project. That **DW3** invited both parties and their wives and children; the family of **PW1** were furious and that **DW3** ordered them out and they remained with the elder son of **PW1**, accused and the complainant. That the accused agreed to transfer the land to **PW1's** names because he wanted to protect his name on condition that they compensate for the developments of the land. **PW1** had no money to compensate, **PW1** wanted time to remove his things, so **DW3** advised them to go to a lawyer and write a consent. That the following day a case was opened against Bishop that is where he ended.

During cross-examination, DW3 answered that while he was talking to **PW1**, **PW1** testified that he had transferred the title to the accused. That he said that he wanted more money to fund their project. That he told him he was under pressure by family members to ask the accused to return the land, the accused

had completed the house for the complainant, educated the complainant's children and gave him two Friesian cows and funded the wedding of his son and that that this was told to him by **PW1** but that also the accused told him a similar story.

The fourth defence witness was **Kaketo Moses, a male adult aged 55 years resident of Butiki Mitala L.C1 Chairman (hereinafter referred to as DW1)**. He testified that by the time **PW1** was buying land, he knew the land used to belong to **PW1**, after sometime, the son of **PW1** called **DW4** and was asking whether he had witnessed the transfer of a title from their father's name to the accused. That again the son came and asked him again to which **DW4** denied.

That the son to **PW1** came reported to Police a case and that the son to **PW1** had caused chaos on the accused's land. That **DW4** called **PW1** via a phone call and he asked him what the problem was, to which **PW1** told him that he had transferred his title to **DW1** because of the business they were doing. That **DW4** told him that he had made a mistake to do that. That **DW4** called **PW1** in a village meeting, the accused and their wives and children and **DW4** in the meeting told them that **PW1** had confessed to transferring the land to **DW1** but the family of **PW1** attacked the Chairman verbally.

Further, that **PW1** said that he wanted **DW1** to transfer the land back to him and that he had made a mistake to do so without informing his family, and that's why the family had turned against him. That **DW1** said in the meeting that he would vacate and transfer the title into **PW1's** name, but that he should be compensated for the house and school fees he had paid for **PW1's** children to which the family of **PW1** refused to compensate **DW1**.

In Re-examination, DW4 responded that **PW1** told him that the reason for transfer was that they had a business that they both were running. That the **DW1** had constructed a house for **PW1** at Mutala Butiki and before **DW1** constructed him a house **PW1** used to stay in Mpumudde.

In resolving all the Grounds in this Appeal, I have carefully analyzed all the evidence of prosecution and the defence as captured in this Judgement.

In respect to **Count 1: Forgery c/s 342 of the Penal Code Act**, the particulars of the offence were that the Accused on the 13th day of August 2016 at Butiki-Matala Village in Jinja District, forged the handwriting signature of Rev. Charles Irongo in order to secure a Land Title.

Section 342 of the Penal Code Act provides that; -

“Forgery is the making of a false document with intent to defraud or to deceive”.

The elements/ingredients of the offence of Forgery include:-

1. The Making of the false document.
2. The maker has to make that document in order to defraud or deceive.
3. The document was made by the accused.

Further **Section 343 PCA** provided that *“In this division of this Code, “document” does not include a trademark or any other sign used in connection with Articles of Commerce though they may be written or printed.”*

Making of false document in on the other hand provided for under **section 345 of the PCA** which provides that :

“Any person makes a false document who-

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

if the effect of the instrument depends upon the identity between the person signing the document and the person whom he or she professes to be.”

Also, **section 346 of the PCA** provides for **Intent to defraud** and reads that:-

“An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person, ascertained, capable of being defrauded by it, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such a person from being defrauded in fact, nor by the fact that he or she had, or thought he or she had, a right to the thing to be obtained by the false document.”

I also agree with what connotes a false document as submitted by learned counsel for the Appellant that:-

“A document is “false” if it purports:- “to have been made in the form in which it is made by a person who did not in fact make it in that form; or to have been made in the form in which it is made on the authority of a person who did not in fact authorize its making in that form; or to have been made in the terms in which it is made by a person who did not in fact make it on those terms”; as per ***Uganda vs. Obur Ronald (Supra) PG7.***

The evidence of the prosecution is that **PW1** testified that he did not sign the Transfer Forms which the Handwriting Expert marked as Exhibit “A”. This document was tendered by the accused and is reflected **on page 5 line 10 of the court proceedings** and was admitted by Court as **DEX2**. It is this very document that **PW4** the Handwriting Expert analyzed against the handwriting and signatures of exhibits that were authored by **PW1** as captured **on page 11, line 3 to 4 of the record of proceedings.**

The ingredients that the prosecution must prove in a case of Forgery are well settled and I agree with them as submitted by the learned state Counsel for the Appellant in this case. I will now put the prosecution’s evidence to the litmus test of the burden of proof in criminal case (supra).

PW1 during his examination in chief on **page 3, line 27 of the record of proceedings**, confirmed knowing the Respondent/accused and he is a friend who is a Pastor and a Bishop; and on **line 37-38 of the record of proceedings**, testified that he had proposed a project of planting nursery trees to him that would supply the Eastern Region which they both got involved in and it was at that point that **DW1** told him that Bank of Africa would give them a loan but would need a security of a land Title.

Furthermore, on the record of proceedings on **page 4 line 5-7**, the complainant (**PW1**) testified that he discussed the above with his family and they agreed that he gives the accused (**DW1**) the Certificate of Title in question in 2016; and thereafter, he handed it to his son Peter Mwesigwa who handed it to the accused.

During cross-examination on **page 4 lines 33-37**, the accused handed a document to **PW1** to read, and this document was identified by **PW1** as Application Form which he confirmed that it bears his signature. This was admitted as **DEX1**.

I have also considered the defence of the Respondent whereby **on page 15 lines 31-38 of the record of proceedings**, **DW1** stated on Oath that **PW1** transferred the land to him willingly and the consideration was in kind to pay for his children school fees, one of whom was Peter Mwesigwa at Darlington University in

Tanzania pursuing a Diploma in Statistics for **DW1** paid 5000\$. **On pg 16 of the record of proceedings lines 5-25**, that he paid fees for Dan Irongo in Makerere University at 1.5, and all the other children of the **PW1, DW1** catered for all their fees and medical expenses that he furthermore constructed a house for **PW1** in which he staying and he produced two receipts of construction of the house.

The fact that **DW1** had assisted **PW1** over time to do the above was corroborated by his witness **DW2** who **on page 16 of the record of proceedings line 28-35** stated that on a certain date, **DW1** called him to be present on the date of transfer to ascertain whether the house was lacking anything and if so that **DW2** should do it. **DW2** added that **DW1** gave Nafutali Ngobi Transfer Forms to go and photocopy and that both **PW1 and DW1** signed and that he was an eye witness. That **DW1** introduced **PW1 to DW2** as his brother and he told him to draw a sketch for **PW1** of the house he wanted. That **PW1** told **DW2** to include a garage.

During cross-examination on page 17 lines 15-20 of the record of proceedings, DW2 testified that the Transfer Form was signed by both **PW1 and DW1** and that the house he constructed for **PW1** was at Butiki Matala, a few distance from the land in question. That **DW2** is the one who constructed the house for **PW1 and DW1** paying him under his company Berge Consult Company. That before **PW1** entered the constructed house, he was staying in Muguluka at the Church where he served.

On pg 11 line 12-16 of the record of proceedings, I have carefully analyzed the above defence and found that while it is not contested that **DW1** in the course of his friendship with **PW1** had assisted him as above, there is however no proof that he did this as consideration to Transfer to him his Certificate of Title. Instead, I have found uncontroverted evidence from **PW1** that while he admitted having signed **DEX1** the Application Form which he thought was to secure the loan facility from Bank of Africa to move forward their proposed tree nursery project, he categorically denied having ever seen or signing **DEX2**, the Transfer Form which is the subject of this case. In his own words he testified that “*–it is a Transfer Form. I have never seen this document. The signature thereon is not mine*”.

From the foregoing, I have further re-evaluated the evidence on record as a whole, it is clear that **PW1** admitted to having signed one document allegedly to secure the loan and there is no proof that another document in the form of the Transfer Form was signed by him. Although the learned Trial Magistrate **on page 5 of the -11 of the Judgement** of the lower court, “*.....PW1 did not produce any document in court to do with the loan application nor a signed Power of Attorney,*

“I am at loss how the bank was to deal with the Land Title in PW1s name and yet no Power of Attorney signed”; the above finding is not based on evidence since by the evidence of **DW1** that in his own evidence **at line 11 page 14 of the record of proceedings** he admitted that *“I secured loans to service the loans including getting a loan in **PW1’s** name which I serviced and I have proof to that”*.

As to what exactly he did with those loans, is not a subject of this case, but suffice it say that it had nothing to do with the tree nursery that he had told **PW1** the loan was to be used for.

Although **PW1** confirmed to the court that he is an educated man with a Diploma in Theology, and he clearly admitted in an affidavit sworn by the complainant **under paragraph 5**; he testified the Title with the bank; and under paragraph 6, he testified that *“it’s true I signed the documents of bank thinking that I was signing bank documents but on making a search, I realized I had been deceived”*; I find that the above evidence does not confirm that what he signed included the impugned Transfer Form, which he had categorically denied.

Instead, the evidence of **PW1**, corroborated by **PW2** and **PW3 Muguluka Adhallah, an Assistant AIP attached to CPS Jinja as a Community Liaison Officer** confirmed that when the son and daughter of **PW1** made a complaint in his office, he asked them to bring their father which they did and **PW3** interacted with the complainant without the children and he asked him to tell him the truth. That the complainant told **DW3** that *“...I want my title I transferred in the name of the accused to be transferred back into my names and he vacates the land immediately...”*

Further, that the complainant told him that he transferred the land to accused’s name to get a loan to make their project. That **DW3** invited both parties and their wives and children; and the accused agreed to transfer the land to **PW1’s** names because he wanted to protect his name on condition that they compensate for the developments of the land, but **PW1** had no money to compensate.

While it is undisputed that **PW1** had passed his Certificate of Title to **DW1** for furtherance of their tree nursery project, and it is not denied that he signed a document which in his thinking was for the loan application, it is clear that **DW1 during Cross-examination, DW1** answered that the consideration for the land was in kind; however it is clear that he was looking at it as a repayment for the services he had rendered to **PW1** over the years.

There is no evidence to prove that **PW1** signed more than one document and this is also corroborated by **DW1** and his witness **DW2** who claimed that he witnessed the signing of a document he referred to as Transfer Form and no other

documents. The question that requires an answer is that if at all **PW2** signed more than the Application Form, at what point did **PW1** ever sign the Transfer Form.

It was submitted by learned counsel for the Appellant that in order to prove forgery, the original document is deemed as the best evidence; I agree with them on this point and I have carefully considered the findings as presented of **PW4** on **PEX3**. The prosecution had a duty to prove the element of Forgery beyond reasonable doubt and the signing of the Transfer Forms by the Respondent had to be specifically proved beyond reasonable doubt and like all criminal proceedings, any doubt entertained on any of the allegations must be resolved in favour of the Accused person.

The evidence of all the prosecution witnesses in this case corroborates each other well and has left no doubt in my mind. **PW1** was clear that although **DW1** has been his close friend over a long period of time, he denied ever having seen or signed the Impugned Transfer Form **DEX2** although he admitted to having handed him his Certificate of Title when he convinced him to get a loan for a project he had suggested to him and also signed **DEX1** the Application Form for the loan that was never extended to them.

His evidence is corroborated by **PW2** his wife with whom he had discussed before passing the title to **DW1** and **PW3** who learnt that **DW1** only accepted to retransfer the Certificate of Title for **PW1** if he paid him for his developments yet he had admitted that he had secured the title for no consideration at all.

Finally, I found **PW4** to be an expert in his field and it was clear from his evidence on **PEX3** which I have critically analyzed that before he arrived at his findings, he subjected the samples presented to which bore current signatures of **PW1** and those on his sample exhibits which included Driving Permit, National Identity Card to scientific analysis and arrived at a finding the signatures differed in material detail from those on the Transfer Form.

The foregoing and the evidence that there is scientific proof that **PW1** did not sign the Transfer Form in favour of the Respondent; and although the accused in his defence insisted that it was from their dealing with each other and that later became greedy when the Respondent had fulfilled his end of the bargain and pleaded misrepresentation which is a civil matter already filed in court; I have found that the expert witness **PW4** was very experienced and it is clear that he was not known to any of the parties in the case and had nothing to gain by the opinion and findings he made, which were also the same findings by his

colleague M/S Hasikimana who gave a second opinion also analyzed the same samples arrived at.

I have also critically analyzed the Judgement, and found that while the Learned Trial Magistrate alluded to the expert opinion of **PW4 on pages. 5, 6, 7 and 8** of her judgement and while it is clear that she acknowledged the contents of his written opinion, findings, samples, it is clear that she misunderstood responses made by **PW4 during cross examination** as captured in **2nd last paragraph on page 6** and dwelt on the time lag or kind of surface that may affect handwriting and also the natural variations that could be caused by movement of the hand and did not consider the context in which **PW4** gave his response.

Furthermore, while **on page 7** in the Judgment she guided herself on the law relating to admissibility and reliance on expert opinion and relied on the authority *Iwa Richard Okenty vs Abol George Okot HCMA No.63 of 2012* where Justice Mubiru held that an expert opinion can be rejected if it is inconsistent with the rest of the evidence available to court where the inconsistency between the two is so great as to falsify the opinion, it is clear that in this case, there is no inconsistency between the evidence of **PW4** and that of **PW1, PW2 and PW3** in this case.

If anything, it is also corroborated by **DW3** who witnessed **PW1** signed once and that of **DW4** who

I have critically analyzed the defence given by **DW1** in this case and his witnesses. **DW1's** evidence rotated on the favors he did for **PW1** which included building for him a residential house, paying fees for his children and paying dowry for his son among others. In the first place as to the other transactions that **PW1** may have had with **DW1**, they are not in any way related to the ingredients of the offence of Forgery.

DW1 in his defence does not deny that he received the Certificate of Title from **PW1**, he however gave a lengthy explanation of how he was friends with **PW1**, a fact that **PW1** also agrees with. This evidence much as it may be correct, I have not found it as the reason why **PW1** passed his Certificate of Title to **DW1**.

Instead, in my analysis, I have not found any grave contradictions or inconsistencies which would make a reasonable tribunal applying the law to the evidence correctly to fault the evidence of **PW1, PW2 and PW3** which would lead it to be rejected. What is clear is that both **PW1 and PW2** were clearly friends with **DW1** and were hoodwinked into believing in that friendship to the point that they did not question his intentions when he brought to them what looked like

a lucrative deal. To me any inconsistencies that relate to **PW1** signing a document which he admits to be **DEX1** thinking it was a bank form has been satisfactorily explained by the evidence of **PW1** and collaborated by **PW2**. **PW1** was very clear when the impugned Transfer form was put before him that he had never seen it or signed it in favour of **DW1** and I found his evidence believable.

After a careful analysis of the evidence of **PW1**, I have found with minor contradictions and inconsistencies, but they are not tainted with deliberate lies or deliberate falsehood as to create any reasonable doubt in my mind; in any case, these were also corroborated by **DW3** and **DW4** to explain how the Certificate of Title got into the hands of **DW1**.

As to whether the document was made with intent to defraud or deceive, I agree with the decided cases relied upon by learned State counsel for the Appellant. **On page 35 line 23 to 29 of the court proceeding PW1** testified that he acted upon a misrepresentation and he signed some documents presented by the accused to acquire a loan and not transfer title of his land. This was also referred to by the learned Magistrate Grade 1 when she refers to this representation upon which **PW1** was to have acted upon. **see page 3 of the Judgment line 19 to 21**. As rightly submitted by learned counsel for the Appellant, **PW2** corroborates this fact and **on page 5, of the record of proceeding PW3** states that the title had been given to the respondent to secure a loan which did not materialize.

After careful analysis of the above, it is my findings are that the intention to deceive in this case was fulfilled when **DW1** presented the forged Transfer Form and secured a transfer of **PW1**'s Certificate of Title into his own names.

As to whether the false document was made by the accused, **PW1** testified that the accused brought him documents claiming that it was required of him to sign them to enable the accused process a loan for the business; and denied ever having seen or signed Transfer Form that the accused presented in court. It's not denied that the respondent was already in possession of the Title and having secured a signature from **PW1** on **DEX1**, the only logical conclusion I can find after **PW1** signing **DEX1** which he admits to signing is that **DW1** having secured a specimen signature of **PW1** on **DEX1**, went ahead and forged the same signature on **DEX 2**, the Transfer Form which he then presented to change the Certificate of Title, which is the subject of this case. I have arrived at this finding after analyzing the evidence of **PW4** *vis a vis* the defence of **DW1** that **DW1** was already conversant with **PW1**'s signature since he was the one who assisted him in 2014 to process the land title and his other lands and having secured a fresh

signature on **DEX1**, took advantage of the trust and naivety of **PW1** to forge his signature since he was familiar with the processes in the Land Office.

In the result it is my finding and decision that the Trial Magistrate Grade 1 did not properly evaluate the Prosecution's evidence and it is clear that instead of applying the burden of proof in criminal cases to the prosecution's evidence and analyzing all the ingredients of the offence in each count, she for her own reasons chose to believe the defence thereby arriving at an erroneous decision.

For those reasons, it is my finding and decision that the prosecution's evidence was consistent and proves all the ingredients of the offence of **Forgery c/s 342 of the Penal Code Act**.

In respect of the 2nd Count: Uttering False documents C/S 351 of the PCA, I agree with the ingredients of the offence as submitted by learned counsel for the Appellant that they include :-

1. That the accused knowingly and fraudulently uttered a false document.
2. That the accused knew that the document was false and presented the same to be relied upon.

They relied on **Black's Law Dictionary 4th Edition (supra)**, but I have relied on the **6th Edn.** which gives the same definition that defines the word "utter" to mean, "to offer, whether accepted or not, a forged instructive, with the representation, by words or actions, that the same is genuine".

In the instant case, the Appellant's evidence is that the Respondent forged Transfer Forms which were used to effect a transfer of land title from **PW1** into the Respondent's name. The above as already elaborately handled in the 1st Count has been proved by the prosecution beyond reasonable doubt and I see no need to repeat it again, suffice it to state that there is uncontroverted evidence that it was **DW1** (the accused) who knowingly and fraudulently uttered a false document; and that he knew that the document was false and presented the same to be relied upon.

There is also no dispute that it was acted upon by the Land Office thereby leading to a transfer of **PW1**'s Certificate of Title from his names to that of the accused.

In the result it is my finding and decision that the Trial Magistrate Grade 1 did not properly evaluate the Prosecution's evidence and she arrived at an erroneous decision.

For those reasons, it is my finding and decision that the prosecution's evidence was consistent and proves all the ingredients of the offence of **Uttering False documents C/S 351 of the PCA.**

Having found as I have, it is my decision that the decision of the learned Magistrate Grade One Her Worship Kyomuhangi Happy Ann at the Magistrates' Court of Jinja, delivered on the 6th August 2010 whereby she had acquitted the Respondent of both offences be quashed and set aside. Instead, this Honorable Court finds the Respondent/ accused guilty of both counts and convicts him on the strength of the prosecution's evidence as charged.

I SO ORDER.

DR. WINIFRED N NABISINDE
JUDGE
23/10/2023

Delivered in open court in the presence of:-

1. The Respondent.
2. M/S. Pamela Orogot - Resident State Attorney.
3. Baligwamunsi Herbert, Court Clerk/ Interpreter (Lusoga).

DR. WINIFRED N NABISINDE
JUDGE
23/10/2023