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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
(INTERNATIONAL CRIMES DIVISION)**

**HCT-00-ICD-SC-0006 -2021**

10 **UGANDA ..... PROSECUTOR**

**VERSUS**

**MIRIA RWIGAMBWA ..... ACCUSED**

**BEFORE: HON.MR. JUSTICE BASHAIJA K. ANDREW**

15

**RULING.**

This is a ruling on whether Miria Rwigambwa (*hereinafter referred to as the accused*) has a case to answer, pursuant to Section 73(1) Trial on Indictments Act, Cap 23; to the effect that upon the conclusion of the prosecution’s case, court shall determine whether a *prima facie* case has been sufficiently established by the prosecution to require the accused to be called give his or her defence. It provides as follows;

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***“73. Close of case for the prosecution.***

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***(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is no sufficient evidence that the accused or any one of several accused committed the offence, shall, after hearing the advocates for the prosecution and for the defence, record a finding of not guilty.”***

30

In criminal trials, the burden of proving the case lies on the prosecution who must do so beyond reasonable doubt. This burden does not shift to the accused except where it is expressly provided so by the law. See: ***Wamango and Others***

5 **v. Uganda [1976] HCB 74.** However, a prima facie case does not mean a case beyond reasonable doubt. At this stage, court is not required to apply its mind as if deciding finally whether the prosecution's evidence is worthy of credit or whether if believed, it would result in a conviction. At the same time, it has been held that that a mere scintilla of evidence can never be enough; nor can any  
10 amount of discredited evidence. A prima facie case must be made against the accused. In **Ranalt T v. R. [1957] EA 332;** and **Attorney General v. Ally Kleist Sykes [1957] EA 257,** a prima facie case was held to mean one on which a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.

15 The prosecution in the instant case correctly re-stated the principles which underpin a prima facie case, citing the case of **Twagira v. Uganda Crim. Appeal No.168 of 2002,** where it was held that;

20 ***“...it must be emphasised that a prima facie case does not mean a case beyond reasonable doubt... the court is not required to decide finally whether the evidence is worthy of credit or if believed, it is sufficient to prove the case conclusively. All the court has to decide is whether a case has been made out against the accused just sufficiently to require him or her make his/her defence. It may be a strong case or it may be a weak one. In that case, an explanation from the accused may well as a matter of common sense be required and an absence of an explanation would invariably lead to inference of guilt.”***

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This court will be guided by the above stated principles, among others, in determining whether the accused in this case has a case to answer.

30 The prosecution was represented by Ms. Benbella Marion, State Attorney, while the accused was represented by counsel Sylvia Namaweje Ebitu, on state brief. Both counsel made submissions which court has taken into account in arriving at the decision herein.

5 In Count 1, the accused is charged with *aggravated trafficking in persons*,  
contrary to Section 3(1)(a) and 4(f) and (i) of the Prevention of Trafficking in  
Persons Act, No.6 of 2009. In Count 2, she is charged with *forgery*, contrary to  
Section 342 and 347 of the Penal Code Act, Cap 120; and in Count 3, *uttering*  
*false documents*, contrary to Section 351 of the Penal Code Act (supra). The  
10 accused pleaded not guilty to all counts.

In Count 1, the particulars of the offence are that the accused, in the month of  
July 2014 in Mbarara District, by means of deception organised, facilitated,  
prepared and sent Arinaitwe Brian (*hereinafter referred to as PW1*) to India for  
removal of his body part to wit; a kidney, contrary to Section 4(f) and (i) of the  
15 Prevention of Trafficking in Persons Act, 2009.

Section 3(1)(a) of the Prevention of Trafficking in Persons Act, which creates the  
offence of trafficking in persons, provides as follows;

***(1) A person who—***

***(a) recruits, transports, transfers, harbours or receives a  
20 person, by means of the threat or use of force or other forms of  
coercion, of abduction, of fraud, of deception, of the abuse of  
power or of a position of vulnerability or of the giving or  
receiving of payments or benefits to achieve the consent of a  
person having control over another person, for the purpose of  
25 exploitation;***

***(b) recruits, hires, maintains, confines, transports, transfers,  
harbours or receives a person or facilitates the aforementioned  
acts through force or other forms of coercion for the purpose  
of engaging that person in prostitution, pornography, sexual  
30 exploitation, forced labour, slavery, involuntary servitude,  
death bondage, forced or arranged marriage; commits an  
offence and is liable to imprisonment for fifteen years.***

5           ***(2) Notwithstanding the provisions of subsection (1), where the offender is a legal person, it shall be liable to a fine of one thousand currency points, and temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities.***

10           ***(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute “trafficking in persons” even if this does not involve any of the means set forth in subsection (1) of this Section.***

15           ***(4) The consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to the acts of exploitation shall not be relevant.”***

Trafficking in persons is aggravated by factors spelt out under Section 4(f); and the relevant factor specific to this case provides as follows;

***“A person commits the offence of aggravated trafficking where—***

20           ***(f) the offence is committed by a close relative or a person having the parental care, authority or control over the victim or any other person;...”***

The essential ingredients of the offence of *aggravated trafficking in persons* contrary to Section 4(f) (supra) which the prosecution is required to prove to the  
25           required standard are;

*(i). the act of recruiting, transporting, transferring, harboring or receiving the victim by means of deception or force or payment.*

*(ii). the purpose is exploitation.*

*(iii). the accused is a close relative or, has parental care, authority or control  
30           over the victim.*

5 The prosecution adduced evidence of seven witnesses. Notably relevant on the issue of aggravated trafficking in persons, is the evidence of PW1- Arinaitwe Brian, the victim. He testified that he got to know the accused sometime in 2013 when the accused's son, one Alinda Michael, was chased by students of another school in Mbarara, who had gone on strike. That Alinda Michael ended up at  
10 Mutesa Institute also in Mbarara where PW1 was a student at the time. PW1 sheltered Alinda Michael in a dormitory, who then gave his mother's telephone number to PW1 who called her and notified her of the whereabouts of her son.

PW1 stated that the accused came and picked both her son and PW1 and took them to her place of work at a shop in Mbarara town. That because the accused  
15 was thankful to PW1, she promised to give him a job after his studies. That indeed later in 2014, the accused gave PW1 a job at her shop trading under the name, *New Lucky Hardware*. That at the time PW1 started to work, he was staying at Nyamitanga in Mbarara, but later the accused made him to stay at her home since he was the one keeping keys to the shop.

20 PW1 further stated that after about four months, the accused disclosed to him that her husband was sick and would be going for treatment, and needed a helper to take care of him. That the accused told PW1 that she was going to do everything in order for PW1 to go abroad with her husband. PW1 stated that he suggested that he should be allowed to first tell his mother about it, but that the  
25 accused told him that she was his mother, and PW1 also kept quiet and never visited his biological mother.

PW1 further stated that the accused facilitated him financially a number of times to process a passport, book an air- ticket, and to carry out medical tests in Mulago hospital and at Agakhan hospital in Nairobi. PW1 stated that he gave all  
30 the medical reports to the accused and when he delivered the last medical reports from Nairobi, the accused told him that it was time to travel and she bought him an air – ticket. That on 1<sup>st</sup> July 2014, PW1 travelled together with

5 Mr. John Rwigambwa (now the deceased) and his son Dickson Tumwebaze (PW2) to India for medical treatment of Mr. Rwigambwa.

That while in India, around September 2014, Mr. John Rwigambwa handed over to PW1 a cell-phone which they used to communicate with the accused in Uganda. That it was then when already in India that the accused told PW1 to  
10 donate his kidney to Mr. Rwigambwa in exchange for property located at Mbarara town. That after several demands and promising him the property by the accused, PW1 accepted to donate his kidney to the deceased.

PW1 further stated that when he presented his passport at the hospital in India in order to donate the kidney, the hospital authorities declined because his visa  
15 was for a caretaker and not a donor. PW1 stated that the hospital advised him to change the visa to a donor status before he could be permitted to donate the kidney. That he then travelled with Mr. John Rwigambwa to the Uganda Embassy at New Delhi where the visa was changed for PW1 to be a donor. That this was after John Rwigambwa had told the hospital that PW1 was his son who  
20 could donate the kidney to him.

PW1 also testified that after a successful procedure at the hospital in India, he donated his kidney to Mr. Rwigambwa the beneficiary. That Mr. Rwigambwa died some days later in India due to some medical complications and his body was repatriated from India and buried at his home in Mbarara. That after the burial,  
25 the accused promised to take care of PW1 who had not healed completely from the surgery wound, but that she later threw him out of the house.

PW1 testified that he made several statements to police about the matter, but conceded that they differed from each other, just as they differed from his testimony in court. He explained that the variations in the statements were  
30 because he was desperate when he made them and that he did not know what he was saying at the time. The police statements are exhibits “DEX1” and “DEX2”, respectively.

5 In his first statement “DEX1”, PW1 stated that it was when they were already in  
India that the accused called him on phone and told him that he had travelled  
to donate the kidney to her husband and promised him property in exchange.  
This statement is in line with his testimony in court in that particular aspect. In  
his additional statement “DEX2”, PW1 stated that he knew very well before  
10 leaving Uganda that he was travelling to India to donate the kidney to Mr. John  
Rwigambwa. This version deferred substantially from his testimony in court.

PW2 - Tumwebaze Dickson, son to the late John Rwigambwa, stated that he  
recalled having met PW1 with the deceased; and not with the accused. That he  
was aware it was his late father; and not the accused, who made arrangements  
15 for PW1 to travel to India. PW2 further testified that when they arrived in India,  
his late father together with PW1 processed the change of the latter’s visa from  
attendant to donor. Further, that his late father and PW1 were so secretive about  
whatever they did and even excluded him and never communicated with him  
anything about the medical treatment. PW2 testified that his late father even  
20 secretly bought and kept a separate phone which he used alone with PW1 for  
communication. That he was left with their old phone and only came across the  
new phone by chance after the other two had travelled to New Delhi to change  
the visa. PW2 further stated that he recalled that his late father told him prior to  
their travel to India, that PW1 was the donor and was donating the kidney on  
25 compassionate grounds. PW2 maintained that it was PW1 who informed him of  
having been taken around and shown properties being talked about.

PW2 also testified that at his late father’s burial, PW1 approached him and  
disclosed to him that his father, the late Rwigambwa, had promised PW1  
something, which PW1 said was land and a house. PW2 further testified that  
30 prior to the meeting after the burial, PW1 had told him that before travelling to  
India, the late Rwigambwa promised to give PW1 a plot of land at Makenke and  
an incomplete building at Katete in Mbarara town. PW2 also conceded that his  
police statement and his testimony in court differed. In his explanation of the  
variations, PW2 stated that;

5           ***“PW1 told me that he met the deceased with the accused, and also that he knew the property in Mbarara belonged to the deceased and not the accused, and that he did not know if the accused owned any property.... Miria did not promise, it is my dad who submitted to the pressure.”***

10       The above is just about all the evidence which is relevant to the charges in this case. The evidence of the other witnesses was largely a reproduction in court of the information they had obtained from PW1, PW2, and the accused.

***Opinion.***

15       After carefully evaluating the prosecution’s evidence, court finds that it falls far too short of proving of the essential ingredients of the offence of aggravated trafficking in persons, in count 1. It does not prove that the accused recruited or transported PW1. Similarly, it does not show that the accused employed force on the accused or fraud or obtained his consent by payment of money or benefits for purposes of exploitation. Importantly, it is so contradictory, manifestly  
20       inconsistent and so discredited that no reasonable court could rely on it.

      PW1’s evidence is that he was asked by the accused to travel with her husband to India as a caretaker. That while in India, the accused who was in Uganda asked him to donate the kidney to her husband. PW1 claimed that the accused promised him, in exchange, an arcade and a house at Katete, and a plot of land  
25       at Makenke in Mbarara town. This version presupposes that PW1 travelled to India without prior knowledge that he was a donor. It is also in tandem with his statement in “DEX1”. However, both versions, invariably, left critical gaps that were not satisfactorily explained.

      For instance, even assuming that PW1 consented to donate the kidney when he  
30       was already in India upon promises made by the accused, that could only mean that he accepted to offer his kidney in exchange for the property. It would appear clearly then that his complaint to police against the accused emanating into the present charges was because the promise of property fell through. PW1 himself

5 actually stated that much in his testimony in court. Nonetheless, that could not  
in any way amount to aggravated trafficking in persons or prove any of the  
essential ingredients of the offence required under the law. At most, it could be  
proof of two parties who willingly entered into a contractual arrangement  
whereby PW1 donated a kidney in exchange for material and/or financial gain.  
10 That invariably proves that PW1 willingly offered his kidney in anticipation of  
material benefit. It does not have in it the elements *recruitment or transporting,*  
*harboring or receiving by means of deception or force or payment.* Clearly, PW1  
acted the way he did in order to fulfil his part of the bargain under an agreement  
as a freely contracting party, and not as a victim as he is presented to be.

15 A part from the above, there is no proof of the alleged communication between  
the accused and PW1 while he was in India. That notion was dispelled by the  
testimony of PW2. He testified that while in India, his late father and PW1  
abandoned using the known telephone and secretly bought and kept another  
one for communication and to do any transaction. As such, PW2 could not tell  
20 or know with whom the other two were communicating. PW7 the investigating  
officer in this case who should have investigated this aspect of the alleged  
communication between the accused and PW1, did not do so. It only remained  
the word of PW1 against that of the accused. In such circumstances, the  
testimony of PW1 lacked corroborative evidence such as phone print-outs or any  
25 other material evidence to substantiate his claim. The evidence of the alleged  
communication between PW1 and the accused failed the threshold reliability test  
under rules of evidence. It could not be relied or acted upon. See: ***Kakooza  
Godfrey v. Uganda (Crim. App. 3 of 2008) [2010] UGSC 11(18 October 2010).***

Further, the accused's version of evidence above presuppose that PW1 travelled  
30 to India unaware that he was the donor of the kidney. This version is also  
materially contradicted by PW2 who testified that PW1 actually knew that he was  
the donor prior to their departure from Uganda to India. It ought to be  
underscored that PW2 was a key witness for the prosecution in support of PW1's  
case. It is, however, not clear as to who between PW1 and PW2 was being truthful

5 or otherwise. It the settled position of the law that where there are doubts in the evidence, such doubts shall be resolved in favour of the accused. See: ***Uganda v. Mutyaba Crim. Session 8 of 2003 [2004] UGHCLRD 8 (22 July 2004)***.

Exhibit “DEX2”, the additional statement of PW1, dated 17<sup>th</sup> August 2016, is to the effect that he was subjected to medical tests prior to travelling to India. That  
10 at first, he did not know the reason for the tests, but later he learnt that they were carried out to enable him to travel to India to donate the kidney to the deceased. That he initially rejected the idea, but later agreed upon being promised the family arcade in Mbarara by the accused. That he then willingly and knowingly travelled to India for the purpose, but upon his return, the  
15 promise was not fulfilled. This version pf PW1 contradicts his earlier one and his testimony in court as it presupposes that he travelled to India well aware that he was the donor to the deceased. Regardless of the contradictions, it would not change the fact that PW1’s conduct was that of a willing party under an agreement to donate a kidney for material gain. The instant case came up only  
20 when he could not be paid what he was allegedly promised under the arrangement. Again this is not evidence of any of the essential ingredients of aggravated trafficking in persons as it is known under the law. It would probably be a case of an alleged breach of contract which does not fall within the domain of criminal law.

25 It is also not lost on court, that the conduct of the accused in the entire transaction was not of a victim but of a willing party. The statement of the LC1 Secretary on record in the disclosures, clearly shows that PW1 went with the deceased to his office several times to procure endorsement of his birth certificate and citizenship verification application form. Coupled with the fact that while in  
30 India PW1 participated in the change of his visa from caretaker to donor - all would dispel any notion that he was a victim of human trafficking. PW1 unequivocally told court that he willingly offered his kidney on a promise of material gain. Without a doubt, he was meeting his part of the bargain under the agreement, which could not amount to being recruited or transported. It instead

5 again compounds the irresistible inference that PW1 was a willing contracting adult and not a victim as portrayed by the prosecution.

Even assuming that there was a breach of the agreement, there would be no basis in law to hold the accused accountable in light of the evidence on record against that notion. It was the testimony of PW1 which was supported in that  
10 respect PW2, that PW1 knew very well that all the property he was allegedly promised did not belong to the accused, but to the late John Rwigambwa. It is not logical that the accused could promise to give out property which was known not to belong to her and PW1 would believe her. PW1 in his testimony stated that he was well aware that the accused had no capacity to give out her husband's  
15 property, especially when her husband was personally actively involved in this whole transaction. It is indeed highly doubtful that the late John Rwigambwa who was the one sick at the time and owned the property, would not be the one who promised to give it out, and it was instead his wife who never owned it that would make such a promise. This supposition is too wild to be believed, and  
20 again such doubts would be resolved in favor of the accused.

There are several other instances of unreconciled grave inconsistencies that render the prosecution's evidence to be rejected. For instance, PW1 claimed that it was the accused who processed all the documentation for his travel to India and also handed over to him his passport at Makindye. On the other hand, PW2  
25 insisted that all documentation was processed and presented by the late John Rwigambwa, and that he does not recall ever seeing the accused at Makindye. PW2 was emphatic that he travelled to Kampala upon his late father telling him that he had secured the visas and that they needed to book the air- tickets. That this was the occasion PW2 met PW1 for the first time. Based on this evidence of  
30 the key prosecution witnesses, it is unclear as to who, between the accused and the deceased processed and handed over the travel documents.

In another instance, PW1 testified that the accused promised him property in exchange for him donating the kidney. However, on the same issue, PW2

5 maintained that he was informed by PW1 that both the deceased and the accused promised to give PW1 the property. When he was pressed further to explain this contradiction, PW2 stated that;

**“... Miria did not promise, it is my dad who submitted to the pressure.”**

10 The prosecution’s case was not helped by the admission by PW2 that his testimony also differed from his police statement Exhibit “DEX6”. He told police that PW1 had disclosed to him that it was the late Rwigambwa who promised to give PW1 properties in exchange for the kidney. It is trite law that evidence rendered on oath in court is to be believed as opposed to police statements which  
15 are not given on oath. See: **Uganda v. Augustine Musana & 2 Others [1985] HCB 20**. Nevertheless, the grave inconsistencies in what PW2 stated to be the act of his late father, PW1 stated it to be an act of the accused; renders both versions gravely contradictory and highly doubtful and incapable of being believed and or safely acted upon.

20 PW7 – D/AIP Nimanya Wilberforce, the investigating officer who should have shed more light on the issue, did not offer much help. He simply stated that his investigations in this case did not extend to acts of the deceased. Where the evidence of the investigator in a case fails to reconcile the inherent contradictions in prosecution witnesses’ testimonies, then the entire prosecution’s evidence is  
25 rendered incapable of proving the fact in issue. In this case, it cannot prove the accused’s participation in recruiting and or transporting or harbouring the victim, which are the essential ingredients required be proved by the prosecution in order to succeed on the offence of trafficking in persons.

The Uganda Supreme Court, in **Shokotali Abdulla Dhalla v. Sudradin Meralli**  
30 **SCCA No. 32 of 1994**, quite instructively held that where there are contradictions in the evidence of a witness, the deciding factor in Law is whether they were such major contradictions as to indicate that the witness deliberately told lies to the court. Similarly, in **Uganda v. Abudalla Nasur [1982] HCB 1**,

5 Masika C.J, held that in assessing the evidence of a witness and reliance to be placed on it, his consistency or inconsistency is a relevant consideration. Where grave inconsistency occurs the evidence may be rejected unless satisfactorily explained while minor inconsistency may have no adverse effect on the testimony unless it points to deliberate untruthfulness. Also, in ***Uganda v. Sowed***  
10 ***Ndosire [1988 -90] HCB 46***, it was held that;

***“The Law on inconsistencies and discrepancies is that grave contradictions unless satisfactorily explained or reconciled will usually but not necessarily result in the evidence of a witness being rejected. Minor inconsistencies and contradictions will not normally***  
15 ***have that effect unless they point to deliberate untruthfulness.”***

The inconsistencies in the testimony of PW1 and contradictions PW2 are major and grave and cannot be ignored. They point at deliberate falsehoods and outright concoction especially by PW1 intended to mislead court. This renders their evidence quite unbelievable and incapable of being acted upon by any  
20 reasonable court.

Under Section4(f)(supra) the offence of trafficking in persons is aggravated if the accused had parental control, and /or authority over the victim. No evidence was adduced by the prosecution showing that the accused is a relative of PW1 or that she had parental control or authority over him. Similarly, there was no evidence  
25 of control furnished in so far as there was no threat or danger posed by the accused to PW1. The available evidence only points to the fact that PW1 was an employee of the accused in a hardware shop. Even for this to qualify as a relationship of control, there needed to be evidence demonstrating a threat of the nature as would compel PW1 to unwillingly offer his kidney. The required proof  
30 is quite lacking and it leaves the prosecution’s evidence of the weakest kind which cannot be relied upon.

In their submissions, the prosecution vainly attempted to introduce the element of coercion of PW1 by the accused. However, no material evidence was adduced

5 to support that proposition. The alleged phone calls by the accused to PW1 while he was in India, would not amount to coercion. The alleged calls have already been discounted given that no proof of what transpired in the conversations was  
10 availed to court. There is even no proof that the conversations ever took place between the two or at all. The prosecution failed to adduce cogent evidence of any apparent or actual threat of the nature that could have forced or compelled PW1 to surrender his kidney against his will to the deceased. This renders the proposition of coercion unsustainable. On the whole, the evidence does not prove the essential ingredients of the offence of aggravated trafficking in persons. The accused has nor case to answer and she is acquitted of charges in count 1.

15 In Count 2, the accused is charged with the offence of *forgery*, contrary to Section 342 and 347 of the Penal Code Act. The particulars of the offence are that the accused, on 16<sup>th</sup> April 2014 in Mbarara District, forged a birth certificate with Serial Number 6081 for Mbarara Municipal Council and put it in the name of Arinaitwe Brian, and a Citizenship Verification Form 'B' with Serial Number  
20 235720 and registered it in the name of Arinaitwe Brian.

"*Forgery*" is defined under Section 342 (supra) as the making of a false document with intent to defraud or to deceive. The prosecution is required to prove the following ingredients;

- a) *the intent;*
- 25 b) *the document is false; and*
- c) *the accused is the maker.*

In the case of ***Chrisestom Mujobe Kahwa v. Uganda 1972 ULR PG-19***, court adopted the definition under S.342 PCA and held that forgery was the making of a document with intent to defraud or to deceive, and the first ingredient or the  
30 starting point was whether the document was false and if it was false, then the court had to consider the next ingredient concerning the intention. In ***George Walter & 3 Others v. Republic [1977] Law Reports of Tanzania N.5***, whose penal provisions are similar to those of the Uganda Penal Code Act, court held

5 that for a document to constitute forgery as defined under the law, it must purport to be what in fact it is not.

PW7 –D/AIP Nimanya Wilberforce, the Investigating officer in this case, testified that he obtained copies of the documents, application forms, passports, and sample handwritings and signatures of the accused and PW1. He submitted  
10 them for forensic examination. PW5 – SSP Sebuwufu Elisa, a handwriting expert, stated that after examining the documents in issue, he found that the handwriting on two of them was similar to that of the accused. Further, the Secretary LC1 in his statement on court record in the disclosures, stated that the documents in question were received by him and that his duty was to sign  
15 and stamp them. That he recalled PW1 used to come to his office with the deceased, and presented the said documents on different dates with the names of PW1 on them, and that the deceased referred to PW1 as his son.

For their part, counsel for the accused submitted that the documents were issued by government although the information filled in could have been  
20 erroneous. That in law, such does not constitute forgery. That instead, the accused should have been charged with *making a false document* contrary to Section 345 of the Penal Code Act. That since she was not, the accused cannot be tried or be called upon to defend herself for the offence with which she was not charged.

25 The established position of the law is that for the offence of forgery to be established, the falsity has to be the purport of the document itself, and not its contents. The document has to tell a lie about itself. See: ***Baigumamu v. Uganda [1973] EA 26***. In that case, the appellant was acquitted of forgery as the falsity of the document was not the purport of the document itself, but its  
30 content. The document was found to be in its basic character and on the face of it did not tell a lie about itself. For all intents and purpose, it remained a receipt even when the content was erroneous.

5 In the present case, it seems that there could have been manifest  
misrepresentations or erroneous content on the documents in issue; whether at  
the behest of the accused or some other person. Suffice it to note that in law,  
such would not be a question of forgery. The false representation or error as to  
the content did not detract from the basic character of those documents. The  
10 testimony of PW5 was that the accused could have filled in the documents with  
the wrong information as mother to PW1, whereas she is not, in order to secure  
the citizenship form for him. Other instances show that the accused filled in or  
gave wrong information to be filled in the documents. Going by the principles  
enunciated in the above cited authoritative decisions on the offence of forgery,  
15 merely filling in of the wrong information into the documents could only  
constitute false content on the documents, but would did not change or alter the  
nature of the documents. As such, it could not amount to forgery of those  
documents, in law. It could only render the documents false for which the  
accused ought to have been charged with the offence under Section 345 of the  
20 Penal Code Act. It is now settled that a person can only be tried for a definite  
offence under a particular penal section. Given that the accused was charged  
with the wrong offence of forgery, she cannot be tried or be called to defend  
herself of another offence with which she was not charged. The charges in Count  
2 are dismissed. The accused has no case to answer and she is accordingly  
25 acquitted of the same.

In Count 3, it is alleged that the accused uttered false documents contrary to  
Section 351 of the Penal Code Act. That on 16<sup>th</sup> April 2014 in Mbarara District,  
the accused knowingly and fraudulently uttered a birth certificate with Serial  
Number 6081 for Mbarara Municipal Council and put it in the name of Arinaitwe  
30 Brian, and also on the 8<sup>th</sup> April 2014 in Mbarara District she knowingly and  
fraudulently uttered a forged Citizenship Verification Form 'B' with Serial  
Number 235720 and registered it in the name of Arinaitwe Brian.

The offence of uttering false documents has the following elements;

- 5        a) *knowingly and fraudulently;*  
          b) *uttering;*  
          c) *false documents; and*  
          d) *the accused is responsible.*

10        To “utter” means to use or attempt to use a forged document. The prosecution must prove that the accused knowingly passed on or used forged documents and that the accused issued, presented, or in any way used the forged documents.

15        The evidence of PW2 was that the subject documents were used by his late father in Kampala and in India. Further, that the deceased wholly financed and organised all the details of the travel and medical treatment and on several occasions presented the documents in issue to PW2 to sign. Prosecution’s evidence further reveals that the persons who uttered the documents to the authorities to process travel documents was the deceased and PW1. PW7 D/AIP Nimanya Wilberforce, the Investigating officer conceded that much in his testimony. He stated that by his investigations, he found that the deceased participated in commission of the alleged offences, and that if he was still alive, he would have been charged as a co- accused in this case. PW7 also conceded that he did not investigate which particular acts in this case were for the accused and which were for the deceased. That he only relied on the information supplied to him by the PW1 to hold the accused responsible for the offences charged. This evidence is nothing short of being insufficient to establish a prima facie that the accused uttered the documents. A case that is entirely built on information supplied by PW1, whose evidence is largely inconsistent, contradictory and untruthful, cannot stand. No *prima facie* case has been established against the accused in Count 3. The charges are dismissed and accused is accordingly acquitted. The net effect is that the accused is acquitted, on all counts.

**BASHAIJA K. ANDREW**

**JUGDE**

**13/04/2023.**