

KENYA / JUDGMENT

Kirui v Republic [2026] KEHC 8937 (KLR)

[2026] KEHC 8937 (KLR)

COURT

High Court

BEFORE

CM Kariuki

CASE / FILE NUMBER

Criminal Appeal E007 of 2024

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL APPEAL NO. E007 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

(Being an appeal from the conviction delivered on 29/05/2024 and sentence delivered 05/06/2024 of Hon. H.M. Nyaberi (C.M) in Narok MCCR NO. 885 OF 2016)

JULIUS KIPKOECH KIRUI..... APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

18/06/2026

1. INTRODUCTION AND BACKGROUND

2. This is a first appeal arising from the judgment of the Chief Magistrate's Court at Narok in Criminal Case No. 885 of 2016, delivered on 29th May 2024, and the sentence imposed on 5th June 2024. The appellant, Julius Kipkoech Kirui, was charged jointly with the late David Kiproisi Chelule with six counts namely: two counts of forgery contrary to sections 345 and 349 of the Penal Code, making a document without authority contrary to section 357(a) of the Penal Code, obtaining land registration by false pretenses contrary to section 320 of the Penal Code, and two counts of uttering false documents contrary to section 353 of the Penal Code.

3. The charges arose from the transfer and registration of Land Parcel No. CIS MARA/NKOBEN/108. The complainant, Michael Warui Wacanga, testified that he lawfully purchased the land from Emmanuel Memusi Ole Marren in 1982 and obtained a title deed in 1983. He later discovered that the land had been transferred and registered in the names of the appellant and others without his knowledge or consent.
4. The prosecution called four witnesses. PW1, the complainant, denied ever selling or transferring the land to the appellant. PW2, the Land Registrar, produced the transfer documents, application for consent, consent of the Land Control Board, and the Green Card relating to the suit property. PW3, the investigating officer, investigated the alleged fraudulent transfer. At the same time, PW4, a forensic document examiner, testified that the signatures appearing on the impugned transfer documents and the application for consent did not belong to Michael Warui Wacanga and were forged.
5. In his defence, the appellant maintained that he and members of the Setkobor Group purchased the land from a person who identified himself as Michael Warui Wacanga, conducted an official search, paid the purchase price through advocates, obtained Land Control Board consent, paid stamp duty and registration fees, and were thereafter registered as proprietors. He denied any involvement in forgery or fraud.
6. Upon evaluating the evidence, the trial court found that the prosecution had proved all the counts beyond a reasonable doubt and convicted the appellant under section 215 of the Criminal Procedure Code. The appellant was fined Kshs. 100,000/= on Counts I, II, III, V, and VI, in default to serve two years' imprisonment on each count, and Kshs. 50,000/= on Count IV, in default to serve six months' imprisonment.
7. Being dissatisfied with both conviction and sentence, the appellant lodged the present appeal.
8. **MEMORANDUM OF APPEAL**
9. The Petition of Appeal dated 20th June 2024 challenges both the conviction and sentence imposed upon the appellant, Julius Kipkoech Kirui, in Narok Criminal Case No. 885 of 2016. The appellant contends that the trial court erred in law and fact by finding him guilty of various offences relating to forgery, making documents without authority, obtaining registration by false pretences, and uttering false documents in connection with Land Parcel No. CIS MARA/NKOBEN/108.
10. The appellant argues that the trial magistrate wrongly concluded that he forged a land transfer form and the consent of the Land Control Board, despite evidence that the relevant documents were prepared and executed through an advocate who was present during the transaction. He maintains that the prosecution failed to investigate or call the advocate as a witness and therefore did not establish that he was the maker of the alleged forged documents. He further contends that the prosecution failed to prove the essential elements of forgery, including the requisite criminal intent.

11. The appellant also challenges the finding that he made a false national identity card in the name of Michael Warui Wachanga. He asserts that he and other members of the SET KOBOR group personally interacted with the vendor, who identified himself as the land owner and whose identity card had been deposited with the advocate handling the transaction. According to the appellant, the trial court disregarded the defence evidence and improperly relied on speculation and conjecture.
12. Further, the appellant faults the trial court for filling gaps in the prosecution's case by drawing adverse conclusions from the failure to call certain witnesses and by disregarding evidence from defence witnesses regarding the existence and activities of the SET KOBOR group. He maintains that the court ignored crucial evidence showing that the Directorate of Criminal Investigations had investigated the transaction, interrogated the parties, and effectively cleared it before the land was registered in the purchasers' names.
13. The appellant additionally argues that the trial court failed to rigorously evaluate inconsistencies in the prosecution's evidence, including an affidavit allegedly sworn by the complainant disclaiming any complaint against the accused persons and contradictory testimony by the Land Registrar regarding the issuance of the title deed. He further contends that the evidence demonstrated that all requisite completion documents, stamp duty, and registration fees were duly processed before registration was effected.
14. The appellant also disputes the findings that he uttered false documents, namely the land transfer form and the application for Land Control Board consent, asserting that there was no evidence proving that he prepared the documents and that they were generated as part of a genuine land sale transaction after payment of the purchase price. He maintains that he and his co-purchasers were innocent purchasers for value without notice of any fraud or competing claim to the property.
15. Ultimately, the appellant contends that the conviction was unsafe, unsupported by the evidence, and contrary to the law. He therefore prays that the High Court quash both the conviction and sentence, set aside the judgment of the trial court, and order his immediate release, together with any other relief the court may deem appropriate.
16. The Supplementary Grounds of Appeal dated 20th June 2025 principally challenge the sentence imposed upon the appellant rather than the conviction itself. The appellant contends that the trial court imposed a harsh and excessive sentence disproportionate to the offences for which he was convicted, thereby warranting interference by the appellate court.
17. The appellant further argues that the sentencing order was ambiguous because the trial court failed to clearly indicate whether the sentences imposed on the six counts were to run consecutively or concurrently. According to the appellant, this omission created uncertainty regarding the actual duration of the sentence and rendered the sentencing order unclear and incapable of proper implementation.

18. Additionally, the appellant maintains that the fines imposed were excessively high and not commensurate with the circumstances of the case. He therefore urges the appellate court to review the fines and reduce them to a more reasonable level.
19. The appellant also faults the trial court for failing to consider the option of a non-custodial sentence. He argues that the offences in question were not of such gravity as to necessitate imprisonment and that the court ought to have considered alternative sentencing measures. If the conviction is upheld, he urges the appellate court to substitute the custodial sentence with an appropriate non-custodial sanction.
20. Further, the appellant asks the court to take into account the period he has already spent in custody and to consider whether the time served is sufficient punishment. He submits that the period already served should be credited in his favour and that he should consequently be set at liberty.
21. Based on the foregoing grounds, the appellant prays that the High Court review and reduce the sentence on the basis that it is harsh and excessive, clarifies and orders that the sentences imposed on the various counts run concurrently, and grants any other orders that the court may deem just and appropriate in the circumstances of the case.
22. **SUBMISSIONS**
23. **Appellant's Submissions**
24. The appellant's written submissions are premised on three principal issues: whether the prosecution proved the offences of forgery and related counts beyond a reasonable doubt, whether the appellant was an innocent purchaser for value, and whether the sentence imposed by the trial court was harsh and excessive.
25. On the issue of forgery, the appellant submits that the prosecution failed to establish the essential ingredients of the offence. Reliance is placed on **Sukanti Chaudhry v State of Orissa, Criminal Revision No. 1407 of 2008**, where the court held that forgery requires proof of the existence of a forged document, proof that the accused forged it, and proof that it was used with the intention of causing prejudice to another person. The appellant further relies on **R v Dodge and Harris [1971] 2 All ER 1523**, in which Phillimore L.J. explained that a document is false if it purports to have been made by a person who neither made nor authorised it. Further reliance is placed on **Joseph Mukuha Kimani v Republic, Criminal Appeal No. 76 of 1983 [1984] eKLR**, in which the Court of Appeal held that the prosecution must prove that the document was forged, that the accused knew it was forged, and that he intended to defraud.
26. The appellant argues that no evidence was tendered to demonstrate that he personally created or altered any of the impugned documents. He maintains that the transfer documents, Land Control Board application, and consent were prepared and executed through an advocate, Scholastica Mogere, in whose office the transaction was conducted. He contends that all members of the SET KOBOR self-help group met in person with a person

who identified himself as Michael Warui Wachanga, the registered proprietor of the land, and that official searches conducted before purchase confirmed that the property was registered in his name. The appellant, therefore, submits that the prosecution failed to prove that the documents were false or that he was responsible for their creation.

27. In support of the argument that the prosecution failed to establish the act of forgery, the appellant relies on **Caroline Wanjiku Ngugi v Republic [2015] eKLR**, where the court held that forgery involves the false making or material alteration of a document with the intent to defraud, and that the prosecution must prove each constituent element of the offence. He further cites **Kilee v Republic [1967] EA 713**, where the court stated that a forged document must “tell a lie about itself” and be intended for use as genuine. According to the appellant, the documents presented during the transaction were genuine, processed in accordance with lawful procedures, and approved by the relevant public authorities.
28. The appellant further argues that there was no proof that he knew any of the documents were forged. He points to the evidence of the investigating officer, PW3, who acknowledged that investigations were conducted into the land's ownership history and that the Directorate of Criminal Investigations ultimately issued a letter authorising the District Land Registrar to proceed with the registration process. The appellant submits that such conduct is inconsistent with any suggestion that he knowingly participated in a fraudulent scheme. He contends that he cooperated fully with investigators and genuinely believed he was transacting with the lawful owner of the land.
29. On the issue of intent to defraud, the appellant submits that the prosecution adduced no evidence showing that he intended to deceive anyone. He emphasises that the transfer process was scrutinised and approved by the District Land Registrar, who confirmed that all completion documents, including the transfer forms, Land Control Board application, consent, stamp duty receipts, and registration receipts, met the legal requirements. The appellant, therefore, argues that he merely followed the lawful process for acquisition and registration of the property.
30. To reinforce this argument, the appellant relies on **Republic v Susan Achieng Awuor [2021] eKLR**, where the court held that a conviction for forgery cannot stand where there is no evidence that the accused made the document, knew it was forged, or intended to defraud. The appellant submits that, similarly, no nexus was established between him and the alleged forgery and that the prosecution therefore failed to prove the charges beyond a reasonable doubt.
31. Regarding the second issue, the appellant argues that he was an innocent purchaser for value without notice of any defect in title. He submits that he undertook official searches, verified ownership documents, paid valuable consideration, executed sale agreements, and completed the transfer process through lawful channels. He relies on the definition of a bona fide purchaser contained in Black’s Law Dictionary, 8th Edition, which describes such a purchaser as one who acquires property for value without notice of another person's claim

or defect in title.

32. The appellant further cites **Lawrence Mukiri v Attorney General & 4 Others [2013] eKLR**, where the court outlined the elements of a bona fide purchaser, namely that the purchaser holds a certificate of title, purchased the property in good faith, had no knowledge of fraud, purchased from a person with apparent valid title, had no notice of fraud, and was not party to any fraud. He contends that he satisfied all these requirements and that the evidence demonstrated that he honestly believed Michael Warui Wachanga was the lawful owner of the property.
33. Reliance is also placed on **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR**, where the court reaffirmed the principles of indefeasibility of title under the Torrens system and the protection afforded to bona fide purchasers for value. The appellant submits that his title is protected under Sections 25, 26, and 80(2) of the Land Registration Act because he acquired the property in good faith, paid valuable consideration, and had no knowledge of any fraud or irregularity.
34. The appellant additionally cites the South African decision in **Ricky Ganda v The State**, where the court stated that all evidence pointing to guilt must be weighed against evidence indicative of innocence and that a conviction can only stand where guilt is proved beyond a reasonable doubt. He argues that the evidence adduced at trial overwhelmingly supports his innocence and raises substantial doubt as to the prosecution's case.
35. On the issue of sentence, the appellant submits that the sentence imposed was harsh, excessive, and ambiguous. He argues that although the trial court imposed fines and custodial terms on the various counts, it failed to specify whether the sentences were to run concurrently or consecutively. He notes that the committal orders indicate a cumulative custodial term of ten years and six months, thereby creating uncertainty and prejudice.
36. In support of his plea for reduction of sentence, the appellant relies on Article 50(2)(p) of the Constitution of Kenya, 2010, which guarantees an accused person the right to benefit from the least severe punishment where applicable. He further cites **Onchonga v Republic, Criminal Revision No. E016 of 2023 [2024] KEHC 3209 (KLR)**, where the court reiterated that an appellate court may interfere with a sentence where it is manifestly harsh, excessive, or founded on wrong principles.
37. The appellant also relies on **Peter Mbugua Kabui v Republic [2016] eKLR**, where the Court held that where several offences arise from a single transaction, the general principle is that sentences should run concurrently. He submits that all the charges arose from one land transaction involving the same parcel of land. Therefore, if the conviction is upheld, the sentences ought to run concurrently rather than consecutively.
38. In conclusion, the appellant submits that the prosecution failed to prove the offences charged beyond a reasonable doubt, that he was an innocent purchaser for value who followed all lawful procedures in acquiring the suit property, and that the sentence imposed

was excessive and uncertain. He accordingly urges the appellate court to quash the conviction, set aside the sentence, affirm his lawful ownership of the property, and acquit him of all charges. Alternatively, if the conviction is upheld, he prays that the sentence be substantially reduced and ordered to run concurrently.

39. Respondent's Submissions

40. The Respondent, through the Office of the Director of Public Prosecutions, opposes the appeal and urges the High Court to uphold both the conviction and sentence imposed by the trial court. The Respondent submits that the prosecution proved all the charges against the appellant beyond a reasonable doubt and that the learned trial magistrate rigorously evaluated the evidence before arriving at the conviction.
41. The Respondent begins by outlining the factual background of the case. It is submitted that the complainant lawfully purchased Land Parcel No. CIS MARA/NKOBEN/108 from Emmanuel Memusi Ole Marren and was subsequently issued with a title deed in his name. The complainant later discovered that the land had been transferred and registered in the names of the appellant and two other persons, prompting him to lodge a complaint with the police. Following investigations, the appellant was charged with two counts of forgery contrary to section 345 as read with section 349 of the Penal Code, making a document without authority contrary to section 357(a) of the Penal Code, obtaining land registration by false pretences contrary to section 320 of the Penal Code, and two counts of uttering a false document contrary to section 353 of the Penal Code.
42. Addressing the grounds of appeal challenging the sufficiency of evidence, the Respondent submits that the prosecution called four witnesses whose testimony established that the appellant knowingly used forged documents to procure registration of the suit property in his favour. It is argued that the evidence demonstrated that the transfer forms and the application for Land Control Board consent were not genuine documents and that the appellant knowingly relied on them to secure registration of the land.
43. The Respondent particularly relies on the evidence of PW4, the document examiner, who testified that the signatures appearing on the transfer documents and related instruments used by the appellant were inconsistent with the specimen signatures obtained from the complainant. According to the Respondent, this expert evidence conclusively demonstrated that the documents were forged and that the appellant's claim that the documents were valid was untenable.
44. The Respondent submits further that the appellant failed to produce the alleged Michael Warui Wachanga, whom he claimed had executed the transfer documents and sold the property to him. It is contended that the appellant's explanation that he had merely met the said person on the streets and could no longer trace him was implausible and incapable of displacing the prosecution's evidence. The Respondent, therefore, argues that the trial court correctly inferred that the appellant knowingly participated in the fraudulent transaction and was properly convicted.

45. In support of the conviction for forgery, the Respondent relies on Section 349 of the Penal Code, which provides that any person who forges a document is guilty of a felony and liable to imprisonment for three years unless a different punishment is specifically prescribed. The Respondent maintains that the prosecution established the elements of forgery and that the conviction under the section was therefore proper.
46. With respect to the offence of making a document without authority, the Respondent relies on Section 357 of the Penal Code, which criminalises the making, signing, or execution of a document in the name of another person without lawful authority and with intent to defraud or deceive, as well as the uttering of such a document. It is submitted that the appellant's conduct fell squarely within the ambit of this provision because he relied on documents purportedly executed by another person without lawful authority.
47. Regarding the convictions for uttering false documents, the Respondent relies on Section 353 of the Penal Code, which provides that any person who knowingly and fraudulently utters a false document is guilty of an offence and liable to the same punishment as if he had forged the document. The Respondent contends that once it was established that the transfer forms and consent documents were forged, and that the appellant knowingly presented them to the Land Registrar to obtain registration, the offence of uttering false documents was fully proved.
48. On sentence, the Respondent submits that the punishment imposed by the trial court was lawful, lenient, and proportionate to the offences committed. It is argued that although the offences attracted custodial sentences under the Penal Code, the trial court exercised considerable leniency by imposing fines of Kshs. 100,000/= or two years' imprisonment in default on Counts I, II, III, V and VI, and a fine of Kshs. 50,000/= or six months' imprisonment in default on Count IV. According to the Respondent, the appellant benefited from a sentence that was substantially more favourable than the maximum penalties prescribed by law.
49. The Respondent therefore rejects the appellant's complaint that the sentence was harsh or excessive and submits that there is no basis for appellate interference. It is contended that the sentence was both legal and reasonable and that the trial court properly exercised its discretion in sentencing.
50. In conclusion, the Respondent submits that the prosecution presented cogent and credible evidence establishing all the offences beyond a reasonable doubt, that the trial court properly analysed the evidence and correctly convicted the appellant, and that the sentence imposed was lawful and lenient. The Respondent therefore prays that the appeal be dismissed in its entirety and that both the conviction and sentence be upheld.
51. **ISSUES FOR DETERMINATION**
52. Having considered the Petition of Appeal, Supplementary Grounds of Appeal, the record of appeal, and the parties' submissions, the following issues arise for determination:

53. Whether the prosecution proved the offences of forgery, making a document without authority, obtaining land registration by false pretences, and uttering false documents beyond a reasonable doubt.
54. Whether the appellant was an innocent purchaser for value without notice.
55. Whether the conviction was safe.
56. Whether the sentence imposed by the trial court was lawful, proper, and appropriate.
57. ANALYSIS AND DETERMINATION
58. Whether the prosecution proved the offences beyond a reasonable doubt
59. As a first appellate court, this Court is under a duty to re-evaluate the entire evidence and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses testify. This principle was stated in **Okeno v Republic**[1972] EA 32, where the Court of Appeal held that a first appellate court must reconsider the evidence, evaluate it itself, and draw its own conclusions.
60. The burden of proof in criminal cases rests throughout upon the prosecution and never shifts to the accused person except in limited statutory exceptions. The standard is proof beyond a reasonable doubt as stated in **Woolmington v Director of Public Prosecutions** [1935] AC 462.
61. The appellant was convicted of forgery. Section 345 of the Penal Code defines forgery, while Section 349 provides the penalty. In **Joseph Mukuha Kimani v Republic, Criminal Appeal No. 76 of 1983** [1984] eKLR, the Court of Appeal held that the prosecution must establish that the document was forged, that the accused knew it was forged, and that he intended to defraud.
62. The evidence of PW4, the document examiner, was particularly significant. After comparing the questioned signatures on the land transfer form and the application for consent with known and specimen signatures of Michael Warui Wacanga, he concluded that the signatures on the disputed transfer form and the application for consent were not by Michael Warui Wacanga. He expressly concluded that those signatures were forged.
63. Expert evidence is admissible under section 48 of the Evidence Act. The Court of Appeal in **Mutonyi v Republic** [1982] KLR 203 recognised that expert evidence, while not binding upon the court, may properly be relied upon where supported by the circumstances of the case.
64. The complainant unequivocally denied ever selling or transferring the land to the appellant. The prosecution further established that the genuine Michael Warui Wacanga was identified through fingerprint and specimen signature comparisons. The questioned signatures used to transfer the property were found not to be his.

65. Although the appellant contended that he transacted with a person who represented himself as Michael Warui Wacanga, he was unable to produce that person during the investigations or trial. The evidence shows that neither the appellant nor his witnesses could positively identify or trace the purported vendor.
66. The Court is satisfied that the prosecution proved the falsity of the transfer form and the application for consent. The evidence also established that those documents were used to effect the registration of the suit property in favour of the appellant and his associates.
67. Regarding the offence of making a document without authority contrary to section 357(a) of the Penal Code, the prosecution demonstrated that documents purporting to bear the authority and signatures of Michael Warui Wacanga were created and utilised in circumstances where the genuine owner denied executing them. Forensic evidence confirmed that the signatures were not his.
68. As regards obtaining land registration by false pretences contrary to section 320 of the Penal Code, the prosecution established that registration was procured through forged transfer instruments and forged consent documents. In **Patrick Njuguna Richu v Republic**[2018] eKLR, the court held that where registration is procured through fraudulent documentation, the offence is complete once the false representation induces registration.
69. Concerning uttering false documents contrary to section 353 of the Penal Code, the evidence showed that the transfer form and application for consent were presented to the Land Registrar and relied upon to procure registration. In **Kepha Moses Mogoi v Republic**[2014] eKLR, the court held that the offence is proved where a person knowingly and fraudulently presents a false document as genuine. The trial court correctly found that the impugned documents were uttered to the Land Registrar.
70. Upon independent evaluation of the evidence, this Court finds that the prosecution proved all the essential ingredients of the offences charged beyond a reasonable doubt.
71. **Whether the appellant was an innocent purchaser for value**
72. The appellant's principal defence was that he was an innocent purchaser for value.
73. The doctrine of bona fide purchaser for value was discussed in **Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 Others** [2013] eKLR and **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others** [2015] eKLR. However, those authorities arose in civil proceedings concerning proprietary rights and title. The present matter is a criminal prosecution for forgery and fraud.
74. Even assuming the doctrine were applicable, the evidence reveals significant circumstances that undermine the appellant's claim of good faith. The person who allegedly sold the land could not be traced; the signatures on the transfer documents were found to be forged; and the registration was procured using documents whose authenticity was disproved by expert evidence.

75. The appellant's inability to account for the identity of the purported vendor substantially weakens the defence of bona fide purchase. The defence, therefore, does not raise a reasonable doubt sufficient to displace the prosecution's case.
76. I therefore find that the trial court properly rejected the defence that the appellant was an innocent purchaser for value.
77. **Whether the conviction was safe**
78. The Court has carefully re-evaluated the evidence of PW1, PW2, PW3 and PW4 together with the defence evidence.
79. The conviction was founded upon: direct evidence from the registered proprietor denying the transaction; documentary evidence from the land registry; investigative evidence; expert forensic evidence proving forgery; and proof that the forged documents were used to secure registration.
80. The defence largely rested upon the assertion that the appellant dealt with a person who presented himself as Michael Warui Wacanga. However, that assertion was unsupported by credible independent evidence and was contradicted by the forensic findings.
81. Consequently, the conviction cannot be said to be unsafe or against the weight of the evidence.
82. **Whether the sentence was lawful and appropriate**
83. An appellate court will interfere with a sentence only where the trial court acted on a wrong principle, overlooked a material factor, considered an irrelevant factor, or where the sentence is manifestly excessive. See **Wanjema v Republic [1971] EA 493**.
84. The sentence imposed fell within the statutory limits prescribed under the Penal Code. Indeed, the trial court opted to impose fines with default custodial terms rather than immediate imprisonment.
85. I therefore find no basis for interfering with either the fines imposed or the default custodial terms.
86. However, the appellant's complaint regarding ambiguity in the manner of serving the default sentences has merit. The offences arose from the same transaction involving the same parcel of land. In **Peter Mbugua Kabui v Republic [2016] eKLR**, the Court held that where offences arise from the same transaction, sentences should generally run concurrently.
87. Accordingly, should the default custodial sentences become operative, they shall run concurrently and not consecutively.
88. Save for that clarification, the sentence is upheld.

89. DISPOSITION

90. Having carefully re-evaluated the entire evidence on record, the judgment of the trial court, the grounds of appeal, and the submissions by both parties, this Court is satisfied that the prosecution proved the offences of forgery, making a document without authority, obtaining land registration by false pretences, and uttering false documents beyond a reasonable doubt.
91. The Court finds that the learned trial magistrate properly directed himself on the law and the evidence and correctly found that the appellant participated in the use of forged documents to procure registration of Land Parcel No. CIS MARA/NKOBEN/108. The conviction was therefore safe and supported by the evidence on record.
92. Consequently, the appeal against conviction lacks merit and is hereby dismissed. The conviction on all counts is affirmed.
93. As regards the sentence, the Court finds that the fines imposed by the trial court and the attendant default custodial sentences were lawful, within the limits prescribed by the Penal Code, and cannot be said to have been harsh or excessive to warrant interference by this Court.
94. However, the Court finds merit in the appellant's complaint that the trial court did not expressly indicate whether the default custodial sentences were to run concurrently or consecutively. Since all the offences arose from a single transaction relating to the transfer and registration of the same parcel of land, the applicable principle is that the sentences should run concurrently. See **Peter Mbugua Kabui v Republic**.
95. Accordingly, the appeal on sentence succeeds only to the limited extent that this Court clarifies and orders that, in the event of default in payment of the fines imposed by the trial court, the default custodial sentences shall run concurrently and not consecutively.
96. Save for the foregoing clarification, the sentence imposed by the trial court is upheld.
97. The final orders of this Court are therefore as follows:
98. **The appeal against conviction is dismissed.**
99. **The convictions on Counts I, II, III, IV, V, and VI are hereby affirmed.**
100. **The appeal against sentence is dismissed save for the clarification that the default custodial sentences shall run concurrently.**
101. **The fines imposed by the trial court are hereby upheld.**
102. **In default of payment of the fines, the custodial sentences shall run concurrently. The appellant is to serve two (2) YEARS IN DEFAULT OF PAYMENT OF THE FINES. IN CASE HE HAS SERVED TWO YEARS, HE SHOULD BE RELEASED FORTHWITH UNLESS OTHERWISE LAWFULLY HELD.**

103. The judgment, conviction and sentence of the trial court are otherwise upheld in their entirety.

104. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THIS 25TH DAY OF JUNE, 2026.

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CHARLES KARIUKI

JUDGE

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