

“The person making the allegation must prove that the evidence or statement challenged was a false statement of fact, that the person making it knew it was false and that it was intended that the person or court to whom it was made would act on it. The person making it must have known that the statement challenged was dishonest and morally wrong, and that it was made with intent to deceive.”

4. After hearing submissions from both counsels and considering the decision of the Single Magistrate hearing the case CN 35/2021, we find the following important issues relating to the Appellants’ fraud claim against the Respondents.
5. The decision of the Single Magistrate itself made a finding with respect to the registration of Nakia’s name on Takiri’s lands as the adopted child. The Magistrate decided that there was no court’s minute to support the registration or adoption but that was not Nakia’s fault but the Lands’ Commission or office registering Nakia’s name. Furthermore, the Appellants adduced that they have no idea that Nakia was adopted by their elder Takiri. This finding showed discrepancy in how Nakia’s name was registered and should be considered profoundly before deciding whether there was no fraud committed.
6. An additional crucial evidence submitted in the court below was the death certificate of Takiri showing that he passed away in 1926 and after 29 years, in 1955, Nakia was registered over lands of Takiri as the adopted child. Shown on the death certificate of Takiri were his issues and Nakia was not one of them. The evidence should be studied carefully by the Single Magistrate as it goes to the heart of the issue with respect to the registration of Nakia on Takiri’s lands after 29 years since Takiri passed away and that he was not an issue. Because if he was adopted, Nakia’s name should appear as one of the issues. The evidence pointed suggestively to the subject of whether the information given to the Lands’ Commissioner or Lands Office in the 1950s to register the name of Nakia was dishonest or not.
7. Ms Tekanito, for the Respondents strongly opposed the appeal submitting that with no adoption minute from the court and that the death certificate of Takiri did not include Nakia as an issue was not fraud. She explained that the Single Magistrate presiding over the trial was correct to come to the conclusion to register the Respondents on Takiri’s lands.

8. With respect to the second ground of appeal, the Court of Appeal in the same case mentioned earlier further said that,
- “The standard of proof required is on the balance of probabilities, but because of the serious nature of an allegation of fraud, there must be strong, convincing evidence that the statement was made knowing it was false and with intent to deceive. Although that may be proved by circumstantial evidence, nevertheless the evidence must be compelling and allow of no other reasonable explanation.”*
9. The allegation of fraud in land cases may be proved by circumstantial evidence which include hearsay evidence but should be compelling. The Single Magistrate in merely saying that all the evidence were hearsay is wrong in law given that there was documentary evidence which are not hearsay and that hearsay evidence may be considered.
10. In this case, we find that the decision of the Single Magistrate sitting in Makin in CN 35/2021 could not stand and should be set aside.

11. Orders of this court:

- a) The appeal is granted;
- b) The decision of the Magistrates Court of Makin in CN 35/2021 is set aside;
- c) A Single Magistrate should be appointed as soon as practicable to preside over the retrial of the fraud proceeding in Makin in light of our reasons;
- d) Costs is awarded to the Appellants to be taxed if not agreed.

The Hon. Abuera Uruaaba,
Commissioner of the High Court

His Worship Manikaoti Timeon
Land Appeal Magistrate

Her Worship Titan Toakai
Land Appeal Magistrate