



CASE NO 1PA/087/2015

IN THE SUBORDINATE COURT
OF THE 1ST CLASS FOR THE
LUSAKA DISTRICT, HOLDEN
AT LUSAKA

(Criminal Jurisdiction)

BEFORE MRS A. N WALUSIKU

THE PEOPLE

VS

ROSEMARY HOARE

J U D G M E N T

In this matter the accused stands charged with **MAKING A FALSE DOCUMENT** C/S 344(a) of the Penal Code Cap 87 of the Laws of Zambia, **FALSE SWEARING** C/S 109 of the Penal Code Chapter 87 of the Laws of Zambia, **UTTERING A FALSE DOCUMENT** C/S 352 of the Penal Code Cap 87 of the Laws of Zambia AND **DEPRIVING BENEFICIARIES OF THEIR ESTATES** C/S 14(a) of the Intestate Succession Act Cap 59 of the Laws of Zambia. The particulars of Count 1 allege that **ROSEMARY HOARE** on 03/02/14 at Kabwe in the Kabwe District of the Central Province of the Laws of Zambia, did make a False document namely ORDER IF APPOINTMENT OF ADMINISTRATOR case No. 90/14 purporting to show that it was genuinely issued to her by the Kabwe Local Court when infact. The particulars of Count 2 allege that **ROSEMARY HOARE** on

12/07/2005 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did swear falsely before a person authorized to administer an oath that her Certificate of Title No. 37709 in the names of HOARE FRANK KINGSTONE relating to Stand F/3656 was lost and did cause the issuance of Certificate of Title No. 39965 in her names. The particulars of Count 3 allege that ROSEMARY HOARE on 12/07/2005 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, knowingly and fraudulently, did utter a false document namely a Sworn Affidavit relating to a Certificate of Title No. 37709 of Stand No. F/3656 which led to the issuance of Certificate No. 39965 in her names. The particulars of Count 4 allege that ROSEMARY HOARE on unknown dates but between 01/01/2000 and 31/12/2005 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did deprive PAMELA HOARE and others of a farm bearing Certificate of Title No. 37709 of Stand No. F/3656 to which they are entitled.

The Accused pleaded not guilty to all the Counts.

I warn myself at the outset that the onus to prove the cases beyond reasonable doubt lies on the prosecution and there is no onus on the accused to prove ^u~~their~~ innocence. The accused are entitled to give and call evidence or say nothing at all and if

she elects to say nothing this does not affect the burden on the Prosecution. If, after considering all of the evidence in these cases there is any doubt in my mind as to the guilt of the accused then the accused must be given the benefit of that doubt.

In order to establish the guilt of the accused the prosecution must satisfy me upon each and every ingredient of the offences charged. Turning to count 1 of Making a false document, the prosecution must establish

1. That there was an Order of Appointment of Administrator on case No 90/14
2. That the said Order was made by accused
3. That accused was not allowed to make that document
4. That she made the document with intent to defraud

Coming to Count 2 of false swearing, the prosecution must establish

1. That there was a false affidavit
2. That the said false affidavit was sworn by accused
3. That the swearing was done to a person authorized to administer an oath
4. That accused intended to swear falsely

For count 3 of Uttering a false document, the prosecution must

establish

1. That there was a sworn affidavit
2. That the said sworn affidavit was falsely sworn
3. That it was accused who falsely swore the said Affidavit
4. That accused knew the document to be false
5. That accused uttered the said Affidavit and that
6. Her intention was to defraud or deceive

For Count 4 of Depriving Beneficiaries of their estate, the prosecution must establish

1. That Pamela Hoare and others were beneficiaries
2. That they did not benefit from the estate
3. That accused deprive Pamela and others of their benefits
4. That accused was not allowed to deprive them.

I will now consider the evidence in this case. The Prosecution called 12 witnesses while the accused elected to give sworn evidence and called no witnesses.

PW1 was HASTINGS PHIRI a Businessman. Before he started business he was a Banker with ZANACO at Head Office along Cairo road, Lusaka. Before he came to Lusaka he was a Branch manager at ZANACO Kabwe from 1991 to 1995. whilst in Kabwe he came across KINGSTONE HOARE in February, 1992. Mr. Kingstone Hoare was

selling his farm 3656 in Luanshimba area in Kapiri Mposhi. He came to know him through Lima Bank Kabwe Branch. Mr. Kingstone Hoare had a loan with Lima Bank and Lima Bank wanted to possess his farm. He came about to know about the loan as he was told by Kingstone Hoare and because he was unable to clear the loan he decided to sell part of his farm which was 200 Hectres. He owed Lima Bank K830, 000 at that time. He was selling part of his farm at K2, 000,000. PW1 got interested and initially paid K40, 000 in cash which they both signed for. The balance was later given to clear the loan of K830, 000 plus. Later there was a cheque for LIMA Bank of K700, 000 and cash of K300, 000 and a personal cheque of KK100, 000 which totaled K2, 000,000. Mr. Hoare kept the record and on the end they made a schedule of payments and signed it on 07/05/93. The document was dated 04/05/93. The original document was lodged at Lima Bank where he got the copy and had it certified. After that Mr. Hoare surrendered 200 Hectres to him. On the farm was a dwelling house, bore hole, tobacco barns, workers' houses and a grading shade. Since Mr. Hoare had nowhere to go he asked for time from PW1 so that he could build on the 113 hectares of the land left to him and was given time. After he finished building Mr. Hoare moved to the other side. PW1 asked a Caretaker to stay on the farm since he was still in employment. He asked PW2 to take care

of his farm. In 1995 PW1 was transferred to Lusaka. Later he engaged a surveyor a Mr. Hambuba. The document for the subdivision was signed by both himself and Mr. Hoare and was witnessed by Mr. Kanchule and Mr. Siame and the Caretaker Mr. Chimbalanga PW2. After that they engaged a Government Surveyor to survey and a quotation was obtained for K1, 080. He was not around and so his wife sent a deposit of money to Kabwe and the money was collected by Mr. Simwaka to facilitate the survey. In 2001 a diagram to facilitate Title deeds came out and was a Subdivision A of farm 3656, Luanshimba. The Title deed did not come until in 2004 Mr. Kingstone Hoare passed on. In 2005 he came back from USA and found that there were no Title deeds. He went to the farm and found that PW2 the Caretaker was no longer there and so he started looking for him. He learnt that PW2 had been evicted from the farm after the demise of Mr. Hoare and that it was the Administrator of the estate of Mr. Hoare that evicted him. It took him time to locate PW2. In 2011 he put a Caveat on the property because there was no progress on the Administrator to fulfil the issue that was already done by himself and Mr. Hoare. Later he was called by officials from Min of Lands and he showed them proof that he bought the land. The Caveat was not lifted as there was information that he bought. He was given a copy of the letter to that effect. He

was called again by the officials from the Min of Lands so that he could lift part of the land as accused wanted to sell. He responded through his Lawyer H.H Ndhlovu and they refused to uplift. He refused because he had not been given his Title deed. On the issue of subdivision there was no correspondence except a letter of offer of the land of 200 hectares from Mr. Hoare in 1992. To date he did not have the Title deed for his land. He identified accused. He identified the offer letter marked P1. He also identified the acknowledgement of K40,000 advance payment marked P2, the schedule of payment lodged with Lima Bank marked P3, the proposed subdivision of farm 3656 marked P4, the quotation for Government surveyor marked P5, deposit slip for ZANACO Kabwe Branch marked P6, a survey diagram for subdivision A of 3656 marked P7, the Lands Register marked P8, the application for removal of caveat marked P9, a letter requesting that he uplifts part of the land marked P10, the response to P10 marked P11. He also identified a letter written by Kingstone Hoare to the Caretaker over land rates marked P12.

In XXN by Defence Counsel he told the Court that he first met Mr. Hoare in 1992. That was when he was told that he had land to sale. In 1992 Mr. Hoare already had a debt with Lima Bank. He agreed to buy the property on the basis of P1. From there he proceeded to pay the money required culminating in P3 in 1993.

At this point he was shown P8. It read mortgagor Hoare Frank and Mortgagee Lima Bank to secure K1, 800 dated 1993. His understanding was that that was when the mortgage was registered. He was a Banker and knew the issues. It took time to register a mortgage. The recording was about a mortgage. Mr. Hoare said that he had a loan in 1992. He gave him the money to pay the loan. The money was for him to pay off the loan. He did not have proof to say that he paid off the loan using his money. There was to be proof of a receipt that money was paid. It was not PW1 that paid the Bank but that Mr. Hoare did. He gave money to Mr. Hoare for Mr. Hoare to pay off the loan. It was not true that the loan was paid off by ANNIE OSBORN. At this point he was shown a defence document letter to Mr. Hoare for Lima Bank dated 08/02/2002. The letter was from the Liquidators of Lima Bank to Mr. Hoare. It was a letter authorizing Mr. Hoare to sale the land to ANNIE OSBORN as long as she cleared the mortgage. At this point PW1 was referred to a defence document dated 13/02/02. It was also from the Liquidators of Lima Bank. It was a receipt to ANNE OSBORN who paid K5, 567,000 dated 13/02/02. In 1992 Mr. Hoare told him that the Bank was threatening to repossess his farm. It was not true that the BANK Threatened to repossess in 1992. PW2 did not tell him of any transaction of Lima Bank with ANNIE OSBORN. PW2

did not write him any letter. He did not have the Contract of sale at the moment. It was with Mukuka and Company. A contract of sale could have been better than the documents he showed now. At the moment and for 13 years he did not have the document. The reason for the delay was that he had been out of the country for so many years. He could not follow up the matter because to him P1 was a contract of sale. At that time he did not see any future problems. He did not expect the court to believe him. He got the copy of the schedule from the Bank. It was given to him by Mr. Hoare. He got the copy from the manager of Lima Bank. He did not recall the names of the manager. At the time of the transactions, Lima Bank was functional. The final diagram was done in 1992. At this point he was shown P4 and P7. P4 was a proposed subdivision and P7 was a final diagram. The date on P7 was 12/02/10 and the certified date was 13/11/2013. In 1992 they had not transacted. The position was as it was ion the document. He recalled going to the farm in 2014. He had been to the farm twice or more. He did not go to the farm secretly. He went to the farm alone. He found police officers at the farm. He went with a retired surveyor. The officers were Chama, Kalala and the surveyor was Mr. Hambuba. He went there looking for beacons. He did not find the beacons. It was the worker for accused who showed him the beacons. He went there to

identify where beacons were put on the diagram. His surveyor did not draw the diagram after the worker showed him the beacons. From the farm he came to Lusaka. With the police and surveyors they went to the lands officer. They did not want to print the diagrams. He did not want to meet Mr. Hwange. He saw Mrs. Hoare at the Lands office. It was not true that he wanted the diagrams printed. P4 and P7 were not fake. P7 did not show entire farm. Subdivision A did not appear on P8 because it had not been entered. He eventually entered a Caveat on the property. He used some of the documents before court to enter a Caveat. He could not recall exactly which documents he used to enter the Caveat. It was Counsel telling him that it was illegal to use a Contract of sale to enter a Caveat. In 2001 the Title deed was still with the Bank. Subdivision was done by Mr. Hoare who submitted all the required documents. He did not recall seeing anything written by PW2. At this point he was shown a document dated 12/05/95. He did not know the author. The author showed that it was his name. It was not his writing. He was interviewed by the police on the letter. At this point he was shown a letter dated 27/11/13. It was from Lusaka Division Police Headquarters. It was addressed to accused over forgery, uttering a false document. From the letter the police said that it was Mrs. Osborn who paid was false and that the

papers PW1 was brandishing was not true.

In REXN he told the court that the letter dated 27/11/13 was that after he placed a Caveat on the property which accused wanted to sell accused reported the matter to the police that the documents PW1 had were forged. He took the same documents before court to the police. The documents before court were not forgery. Letter dated 12/05/95 to PW2 was not authored by him and did not know it. The same documents before court were the ones he lodged for the Caveat. He did not visit the lands office but the police did. He was outside when the police went inside. He went to the said farm twice or more. He did not go to the farm with the police but met there as they were investigating the matter. The police visited the farm because of the report by accused that he forged the documents. He did not go to the farm secretly. At this point he was shown P4 and P7. In 1990 they had not finished the transaction and could not have obtained the document. He obtained the document in 2013 but the work was done in 2001. At this point he was shown P3. He got P3 from Lima Bank and not the Liquidator in 1993. In 1993 Lima Bank was still functional. At this point he was shown unmarked receipt of 2002. It was a letter to the Liquidators from Anne Osborn. It was from the outstanding debt after the BANK WAS liquidated. P3 was for 1993. On P1 it was adequate as

a Contract of sale and it is proof of sale.

PW2 was JOSEPH ISAAC CHIMBALANGA a Businessman. He was a Customs Clearing Agent at Chirundu Border Post. In 1993 he worked in Ndola where he was suddenly retrenched. Thereafter he became a Caretaker at PW1's farm in Luanshimba Kapiri Mposhi which farm PW1 bought from Mr. Kingstone Hoare. He was introduced to Mr. Hoare. In 1998 he was invited to a meeting to demarcate the land to PW1 and others. Present were Mr. Chule, Siwale, a surveyor Mr. Hambuba and Mr. Hoare. In 2003 he went to do clearing job at Chirundu and left his children at the farm. He used to visit them time and again. In 2003 the same, Mr. Hoare got unwell and died in early 2004. He attended the funeral of Mr. Hoare. After the funeral, the family members sat and appointed PAMELA HOARE as Administrator. PAMELA announced that she would give papers to PW1. In 2004 he was informed by his daughter Hellen that they were to move out of the farm as they illegal tenants. He was followed in Chirundu by accused who showed him the Title deeds that she was the owner of the farm. Before the death of Mr. Hoare he brought a letter from Lima Bank which stated that unless the money was paid they would auction the farm. His family was evicted by accused. He went to the farm and found goods scattered. All the documents that he had

were all over. He had stayed at the said farm for almost 20 years. At the demarcation of the land a document was made where he signed. PW1 bought 200 hectares. PW1 owned the big part of the land and PW2 paid the ground rates on his behalf. He was paying the rates in the names of Mr. Hoare and was taking them to Lima Bank. Mr. Hoare used to write him letters of reminder to pay since he was not present. He identified accused. He signed a document for the proposed subdivision which he identified marked P4. He also identified the letter of reminder to pay ground rates marked P12.

IN xxn BY Def. Counsel he told the Court that he was a Caretaker of PW1. At this point he was shown a letter dated 12/05/95. He had seen the letter and knew nothing about it. At this point he was shown a letter dated 14/11/2005 addressed to him. It was his first time to see the letter. He denied to have claimed for the said land. The later was insinuating that he was claiming for land. At this point he was shown letter dated 12/05/95. The letter implied that he had an interest in land. At this point he was shown a letter dated 31/08/05 authored by PW2 to accused. He did recognize the letter. It was on a headed paper. The logo was for his company. He did write the letter. At this point he was made to read Paragraph 1. The last paragraph said that he bought the land. He went to the farm as a caretaker. He

did not buy any piece of land from Mr. Phiri. The accused went to see him in Chirundu. It was in 2004 when accused went to see her. He did go to Lima Bank with a lady called Osborne. They went because they had received a final notice to leave the farm unless they had paid the loan that had accumulated. At the Bank they did not go to negotiate for more time but went to pay the arrears in the sum of K6, 000+. It was ARTHUR HOARE who paid. He was interested to go to the Bank because he was a Caretaker for the majority of the land. At this point was shown P3. There were two names of KINGSTONE FRANK HOARE and H.M PHIRI purchaser. At this point he was shown Lima Bank letter dated February, 2002. The letter was an agreement between Mr. Hoare and other purchasers of the farm. The gist of the letter was not the payment of the K6, 000,000 for the mortgage to be redeemed. At this point he was shown a letter dated 31/08/05. They went to Lima Bank in order to save the farm. The amount was K6, 000,000. The letter for Lima Bank in ink was K6, 000,000. It was Arthur Hoare who paid. At this point he was shown a receipt of 13/02/02. He could not tell if it was a general receipt. It was FRANK KINGSTONE HOARE who paid for the liquidation of the loan. He recalled to have produced a document P12. IT came from Mr. Kingstone Hoare. PW2's home was destroyed. He got P12 before he left home and all his documents

were intact. Pamela Hoare Phiri was appointed Administratrix of the late Frank Hoare. Accused came to tell him that she was the new Administratrix. Accused did not show him the documents. He moved to Chirundu because of the poor yields at the farm. He was not personally chased from the farm. It was his children who were personally chased. At the farm he left his daughter and her husband. He did not know if they were burning charcoal. He did not notice any charcoal burning at the farm. He used to go to PW1's bank to inform his friend on the happenings at the farm. PW1 was out of the country. He last saw PW1 in 1998. He had no facility to communicate. He did not know when PW1 came back.

In REXN he told the Court that he had never seen a letter dated 12/05/95. He did not know the letter and it was not written by PW1. He had never seen the letter dated 14/11/05. He had authority over the land as he was a Caretaker. On the letter dated 31/08/05 his intention was to claim for land on behalf of PW1. He went to Liam Bank with Arthur Hoare to take a cheque. The letter dated February, 2002 was a matter not related to the matter before Court. He was the one who was chased from the farm because he was the head there though not physically there.

PW3 was NKONGA PAUL MWAMBA an Economist. Between 1995 and 1999 he met Mr. Frank Hoare who was selling land. He bought 70 Hectres of land at K200, 000 per hectare. He paid a deposit and agreed to be paying in installments. In 2002 everything was paid. A note that became a receipt and signed by both was written. He was also told that there was another 15 hectares which he also bought and had 85 hectares in total. This was a different portion of the farm. In 2002 he started working towards getting Title deeds from Min of Lands where he was told to produce the original Certificate of Title. He communicated to the owner who told him that the Certificate of Title was with one of the buyers Mrs. Osborn and that he was going to be given immediately she was done. In September, 2002 Mr. Hoare made progress and PW3 paid K135, 000 for the subdivision and survey fees. Around September, 2012 he sent two daughters to collect a copy of PW3's copy of NRC. The message was communicated through a letter and signed by two daughters. In 2003 Mr. Hoare got ill and in 2004 he died. He was informed that PAMELA HOARE the daughter to Mr. Hoare was the Administrator. He asked him if she was aware that he bought land from her father and she agreed. Pamela told him that the Title deed was with Mrs. Osborn. Pamela issued him with a Contract of sale which he took to his Lawyers. In 2005 he received a note from accused that

she was the Administrator to the late Frank Hoare and asked him to put the documents in place. He responded that all his documents were with PAAMELA and that she was to go and get them. Again he received a note from accused that he was to contribute to the payment of rates as he was at the risk of losing the land. He told her that he did not need to contribute because he had been paying. In 2008 he was taken to Police Headquarters that he had forged a document. After that he was called to the Police in Kabwe that he forged documents. His workers were placed in Cells over the land. He then went to Min of Lands to go and place a Caveat on the land but found that PW1 had already placed one. At lands he asked for a printout and found a lot of changes on the land despite there being a Caveat. Accused was appointed twice Administrator over the same estate. Todate he did not have his Title deed. His portions were intact at the farm. As far as he was concerned the land belonged to him except he did not have the Title deed. He identified accused. He identified the handwritten receipt signed by both himself and Mr. Hoare marked P13. He also identified the Contract of sale by Pamela Hoare marked P14. He identified the letter written by accused marked P15, THE RECEOIPS FOR GROUND RATES MARKED P16A and B, the proposed subdivision marked P17, and the surveyor diagrams marked P18A and P18B. He identified the letter written

by Mr. Hoare's' daughters marked P19. He identified the letter written by the Defendants marked P20.

In XXN by Def. Counsel he told the Court that he got the land from the late Mr. Hoare. After Mr. Hoare died he started dealing with PAMELA. He was convinced Pamela was the Administrator. She had her letter of appointment. The letter was for Kabwe Court. At this point he was shown P14. IT was a contract of sale between Pamela and himself. The document did not indicate in what capacity Pamela was acting in. The document showed that she was selling as personal representative. Pamela was the Administratrix. At this point was shown civil case record for Kabwe Local Court. It was a Civil case record for Kabwe Local Crt 1. The parties were Pamela Hoare and Rosemary Hoare. The issue was revocation of order of appointment of administrator. At this stage he was shown page 4 of the same document. It was from the Kabwe Local Court. The accused communicated to him. It was not true that he did not want to deal with the accused because Pamela was the administrator. He did not recall writing a letter to accused to say that as far as he was concerned PAMELA was the administrator. He had dealt with the accused. He dealt with her when she told him that she was the administrator. He had

dealt with accused on several occasions over the land. Accused promised that he would get his Title deed. He was sued by accused over the said land. He paid for the land to the late Hoare. He had never paid anything to Pamela. Mr. Hoare died on 07/02/2004. The Contract he entered with Pamela was in April/May, 2004. It was not true that in the case where he had been sued he was still insisting not to deal with accused but to deal with Pamela the Administrator. At this point he was shown a letter from accused to PW3. HE had never seen the letter before. He had seen the name of the accused. On the bottom it was copied to his lawyers and his employee. The letter was talking of efforts to get the Title deeds. At this point he was shown letter dated 25/01/08. It was talking of necessity to give Title deeds. He was the author. The letter was written to the lawyer of accused. The Contract of sale was in 2004. At that time Pamela did not tell him that there were proceedings to revoke her administratorship. Accused rung him to say she had the Certificate of Title in her names as it was reverted to her. He just intended to place a caveat on the land but found that someone had already place it. That person was claiming some interest in the land. His complaint against accused was that he bought a piece of land and despite his effort to acquire Title it was to no avail as the seller died. It was the administrator

of the farm that had let him down.

In REXN he told the court that P14 was a Civil case received from Kabwe. It seemed genuine as it had a date stamp. It bore date of 10/04/04 and 27/04/04 as hearing date. It was only given on 10/10/04. P14 was drawn on 09/03/04 when Pamela was the Administrator. Pamela was representing the farm for Kingstone Hoare. P14 was a genuine document.

PW4 was ANNE OSBORN a Business lady. According to her in 2001 she went to Luanshimba looking for land. Whilst there she was approached by Mr. Kingstone Hoare who told her that he was able to sell her some land. She was offered a portion of land which she accepted. It was 20 Hectres of land at K6, 000,000. Mr. Hoare told her that he was going to contact Lima Bank for authorization to sale. He further told her that he had a debt with the Bank which he needed to settle. After a while he gave her a copy from Lima Bank on the transaction which authorized him to go ahead with the sell. On 13/02/02, herself, the son to Mr. Hoare and PW2 and Mr. Hoare travelled to Kabwe where Mr. Hoare drafted a letter for confirming that she was the one that was going to pay for the mortgage. Mr. Hoare returned and she came to Lusaka with ARTHUR HOARE and PW2 to make a payment. In

Lusaka they went to Lima Bank and paid for the mortgage an amount of K5, 767,000 and was issued with a receipt No. 271295. Since she was to pay K6, 000,000 the balance of K233, 000 was handed over to PW2 to take to Mr. Frank Hoare since she was not going back to Kabwe that day. Lima Bank gave her the Title deed which she kept as security for the payment that she did until such a time that she was to be issued with a subtitle of her portion. There were letters which were written by Lima Bank authorizing her to get the 20 Hectres at K6, 000,000. She got a Surveyor a Mr. Mariana who was now late who surveyed and put the beacons. She was now waiting for the diagrams and consent letter from Mr. Hoare. She did the Assignment but the process for Mr. Hoare took long and so her consent expired. He had a lot of issues to deal with and time was running out. Mr. Hoare also fell ill and he passed on. She started waiting for the Administrator and came to learn that accused was the Administratix after a year. Since she had the Title deed, accused visited her because she needed the Title deed. Accused told her that she needed to sort ~~put~~ out issues with Lima Bank and Min of Lands. Accused assured her that it was not going to be a problem and that issues of Title deeds for her would be sorted out. They went to Min of Lands and she handed her the Title deed. Since that time she had been reminding accused of the

Title deed. The diagrams were not done and had not yet received them since that time. She identified accused. She identified the letter written to Lima Bank by Frank Hoare marked P21, the response by Lima Bank P22, the receipt from Liam Bank P23. At the time she bought the land, it was Frank Hoare who was occupying the farm. The title deed she was given was in the names of Frank Hoare. She paid the money to the Liquidators instead of Lima Bank because Lima Bank was under liquidation.

In XXN by Defence Counsel she told the Court that she went with PW2 and ARTHUR HOARE to clear mortgage at Lima Bank. She aid to clear the mortgage at the Bank. Arthur just accompanied her to the Bank because his father Mr. Hoare could not accompany them. The accused had not deliberately refused to give her Title. Accused was her friend. She was not aware that accused had normalized the title deed in her names. She was aware that title had since changed from Frank Hoare to accused. She had no transactions with accused apart from what she had with Mr. Hoare.

In REXN she told the court that the position was that she transacted with Mr. Frank Hoare. Frank Hoare was deceased and the transaction had not come to its end.

PW5 was JOSY MICHELO a farmer/ Lecturer. In 1995 he worked for Lima Bank as the last manager at Kabwe Branch before it was liquidated. The bank went into liquidation in 1997. Some of his duties were to coordinate the issuance of loans through the loan office and ensure that the loans were paid back and also to ensure that day to day operations of the bank. The procedure for loans was that it was given looking at the security that one had. If one gave a Title deed as security then the loan became due, it was a duty of the manager to call the owner so that they tell you how they will pay. If it was problematic they used to discuss and find someone to purchase or the Bank could find someone to purchase the property. ~~One~~ the purchaser was found it was the duty of the Bank Manager and the farmer to agree on the terms and period of payment. The reason why the farmer had to be called was for him to explain where he would stay if the land was sold. Once details had been agreed upon, it was the duty of the manager to advise that payment be made to the Bank. After the agreed amount had been paid the Bank would pay the refund on the charges especially on title. Once the principal amount and the interest were paid in full the farmer would bring documentation to the Bank which indicated that everything had now been done in writing. Upon receipt of the document, the duty of the manager was to release the Title to the farmer so

that the surveyor could go on the land to survey. The manager had to advise the farmer and the purchaser to seek the services of a legal practitioner for the purchase of the land. Those who had collateral if cleared the loan he was entitled to get another loan using the same collateral but depended on the amount of the loan. P3 showed that the amount was settled by the purchaser and that the Bank got its principal amount and interest.

In XXN by Def. Counsel he told the court that he knew that Mr. Frank Hoare was one of the prominent farmers. He could not tell as to how many times he got loans from them. He was familiar with him. He got more than one loan. In 1992 he failed to pay his loan. He got the loan in the 1991-1992 season. He did pay back the loan through the sale of 200 Hectres. It was paid in 1993. He did not recall when he got the next loan. He knew that he had a loan because at the time of liquidation, he was still a loanee. Liquidation was in 199. He did not know the amount. PW5 was at the bank till the time of liquidation. As of 1992 Mr. Hoare had liquidated the loan and PW5 could not recall the next loan. At this point he was shown P22. IT was dated 2002. It was talking of the sale of 20 Hectres. P22 was telling Mr. Hoare to go ahead with the sale of land. The letter was telling him to sell and clear the loan. At this point he

was shown P23. He was paying the outstanding loan. It was a debt for the current loan. After 2002 Payment he was not at the Bank because the Bank had been liquidated. He did not know if there were any other loans taken. At this point he was shown P22. It was written the liquidation manager.

In REXN he told the court that he did not recall as to how many times Frank Hoare got the loans from Lima Bank. Even after the sale of 200 Hectres he continued to get the loans. He got more loans because of the trust the Bank had in him. At this point he was shown P23. The money was paid to the liquidators as the Bank was closed.

PW6 was **ELPHAS GILBERT CHULE** a farmer. He had stayed in Luanshimba since 1976. In May, 1998 he was invited by the late Frank Hoare his neighbor and introduced him to PW1 who had bought a subdivision of his farm. Mr. Hoare wanted them as neighbors to know the buyer. He was asked to sign on a piece of paper. The paper contained a map of Mr. Hoare's farm and a subdivision. He was second on the people who signed. There was Mr. Hoare, Siwale, himself and PW² who was a caretaker, the surveyor and PW1. On the paper were their names. He identified P4. On P4 there was 200 Hectres that PW1 bought in 1998. There was his signature. If someone came to say PW1 did not buy the

land then there was something wrong.

In XXN he told the court that he did not witness the sale of the land. He was just told by Mr. Hoare that ~~accused~~ PW1 had bought the land. At this point he was shown P4. IT was a proposed subdivision. It could be a proposal to lead to the sale. He could not tell if the diagram showed that the farm was sold.

In REXN he told the court that according to him he was told that PW1 had bought a part on the diagram.

PW7 was WANTHANTHA KOTZEBYE SIWALE a Farmer in Luanshimba area. He had stayed there for over 40 years. On 16/05/98 he was at his farm and was a close friend to Mr. Hoare. Mr. Hoare took PW1 to his home and was with PW6. Mr. Hoare wanted him and PW6 to witness his sale of a portion of his farm. He was not sure of the measurement but knew the demarcation. He and PW6 signed as witnesses. He identified P4. On P4 there was his signature and a map of 200 Hectres for PW1. He did not know PW1 before the day of signing. PW2 was the caretaker for PW1's farm.

In XXN he told the Court that he was just told by Mr. Hoare that PW1 had bought the farm. He did not witness the actual sale.

He knew that the farm was sold. What he did not know was when money was exchanged. At this point he was shown letter dated 12/12/02. He denied to have signed on the said document. He signed on the proposed subdivision. There was nowhere on the document which showed that the land was sold.

In REXN he told the court that he signed on P4 to witness that the land had been sold. He was witnessing that the land was bought by PW1.

PW8 was PAMELA HOARE a Branch Manager at Handyman's Paradise. She knew Frank Kingstone Hoare. He was her late father. He had 14 children of which 7 were from the first wife and 7 from the second wife, five of the children were deceased. She was the first born in the family. Her father died on 01/02/2004 in Kabwe. He used to live on the farm in Luanshimba. After the funeral she was chosen Administrator to his estate. On 26/02/2004 she was appointed Administrator. She then called people e who had bought land from her late father so that she could give them the required documents. She managed to see PW3, PW4 and PW1 and PATRICK TOURE. She only managed to talk to PW3 and PW4 and was looking for PW1 and was told that he was out of the country. She gave them copies of her Administratorship. At

that time PW4 had the Title deed. She asked her to give her the Title deeds so that others can also use it. She discovered that the Title deeds was given to accused her young sister. She tried to inquire and discovered that accused had letters of administration and that she had changed her father's Title deeds into her names. She was not told that accused was also an Administrator. She was not sued to any court to have her administration revoked. At court she was just told that they sit down and resolve the differences that they had. Her appointment happened in Kabwe. She identified her Order of appointment of Administrator marked P24. There was no family meeting that appointed accused as administrator. She was later called by the police on allegation that she forged the late father's national Registration Card. The second time she was taken to the police when accused alleged that PW1 and PW3 had forged letters purporting that they bought land from her father. She identified accused. PW1, PW3 and PW4 still had a claim to the land.

In XXN she told the Court that accused was her sister. It had been a long time since she spoke to accused. The reason was that accused was a difficult person. She was the complainant in this matter. She had no idea to say that her complaint was that she had been denied land. Her complaint was to know how accused

became Administrator, how she changed the documents and who chose her. She had a compliant over land. The land was for the family. It was her father who purchased the land. It was her father who paid for the land. She never used to keep her father's receipts for her to have proof. She did not any proof of payment. It was not possible that someone else could have paid. She had proof of her father's payment. She told court earlier on that she did not have proof. She did not know if at the time her father was acquiring land accused her sister was married. She did not know that at that time accused was married to ALEXANDER ALXNDEROS KOKKIAS. It was not to her knowledge that the money to purchase the said land came from accused's husband. She was appointed administrator on 26/02/2004. It was in the Kabwe Local Court. Her appointment had never been revoked. She was still the Administrator. At this point she was shown proceedings from the Local Court. She did not recognize the document. It was a Local Court record dated 06/10/2004. She was PAMELA HOARE. It read revocation of Order of Appointment and sharing of estates. It stated that the case was proved. She had no idea of the proceedings which she was taken to Court. At this point she was shown Page 3. She did not agree with that. WAYNE was her young brother. ELIZABETH HOARE Was her young sister. She was not aware if ELIZABETH was also

in Court at that time. The judgment was dated 06/10/04. She had no idea of the document. She did not live in the land when her father was there. According to her father he bought the land. PW3 used to visit her house in Lusaka. She had no documents to show that the people she talked about bought land from her father. At this point she was shown a printout of the land register. It was for F3656 Luanshimba. It was the same property for her father. It showed history of what had happened on the land. Entry No 9 showed that accused was appointed administrator. She did not know about that. Entry No 10 showed that there was a deed of assent. Entry No 6 was caveat entered by accused. Entry No 8 showed original certificate of Title lost and duplicate issued. At this time she was shown the Certificate of Title in the names of accused. It was dated 12/07/2005. It was for farm 3656. It was not true that she went to Min of Lands asking them to change Title into her names. She had no idea that the issue of land was at the High Court. At this point was shown Affidavit in the High Court for accused, PW1, PW3 and others. At one time accused had two letters of appointment of administrator. At this point she was shown letters of probate. It was obtained in 2014. She had no idea about it. The owner of the land was Frank Hoare. Accused was still alive. She had no idea if accused had deprived her. She

did not know if there was a police report between her father and PW1. AT this point she was shown a police report. She did not believe that the transaction was a fraud. He had no idea that PW1 sold part of his land to PW2. She did not know that PW1 attempted to sue accused in the High Court but dropped the case. She knew PW5. One of her sisters was married to PW5's son. She knew that her sister and Mr. Chule owned some portion of the land. She had no idea that they tried to sue accused but dropped the case. At this point she was shown a writ of summons in the case of the Chule's. The parties were Patrick Chule and his wife. At this point she was shown summons in the case of PW1 and accused. The case in the High Court was for 2013. She had no idea of the summons at Kabwe Local Court. At this point she was shown a Contract of sale. She had never ~~done~~ a contract of sale with PW5. She did not recognize the document. Between March 2004 and October 2004 she was the administrator. No money was exchanged from PW3 to her. At this point she was shown the Gazette. It was a publication in the paper over loss of title deeds. She did not see the said publication.

In REXN she told the court that she had no idea to have appeared in the Local Court. She had never paid any money in the Local Court. She was never told as Administrator the loss of title deeds. She was not aware that accused was appointed

administrator. She had never entered into a contract with PW3. It was her father who dealt with PW3, PW1 and PW4. She was not aware that accused got Title deeds in her names.

PW9 was KALALUKA LIYWALI a Land Surveyor. He had been a Land surveyor since 1991. He was now doing private practice. Before that he was a Civil servant employed by Min of Lands and was based in Kabwe. His qualifications were Surveyor' License issued by Survey Control Board of Zambia. As a surveyor he did site plans for the area to be surveyed which were done by Town and Country planning. Once someone came with documents and with a piece of land to be surveyed. You looked at it and if it was okay you followed what was depicted on the site plan. 18 years ago he was in Kabwe and was the regional surveys officer. He recalled to have carried out some surveys in Luanshimba area at Frank Hoare's farm. Since all requirements such as payment were made he went to carry out the survey using the existing beacons and carried out a traverse survey. After surveying he prepared a report which he lodged to the Surveyor General. The document was approved and given a survey number. At the farm he was shown the beacons by Mr. Frank Hoare. It was a subdivision that was done in favour of the buyer. A survey diagram was generated. In 2014 he was called by Police officers over the land that he

had surveyed. He told them that he was retiree but they insisted to see him. He told them that he was the one that had surveyed the said land. They went to check on the beacons and found that some beacons had been uprooted or broken. He identified the site plan and survey diagram marked P4 and P7. He identified accused.

In ~~X~~N he told the court that he was the Regional survey officer at that time. He personally carried out the survey. At the time of the survey he did not know the buyer. He later came to know that it was PW1. He did not have PW1's documents. There were no names of diagrams. It was not the police that told him that the land belonged to PW1. He did not have any document to show that the land belonged to PW1. AT THIS POINT HE WAS SHOWN a Certificate of Title in the names of accused. As a surveyor it meant that the owner was the one whose names appeared there. The subdivision that he surveyed was for PW1. Certificate of Title came with a diagram. He did not prepare that diagram. It was prepared in 2005. At this point he was shown P7. It was prepared in 1998. It was the one he prepared. The two diagrams for 2005 and 1998 were not the same. The other subdivision was done in November, 1972. He did not know the deed of assent. From the documents it showed that accused was the owner of the land.

In REXN he told the court that it was the COT for Frank Hoare. His diagram was done in 1998 and the other one was done in 1972. His scope was to survey a subdivision.

PW10 was KAPUTO M. MUTEBELA the Provincial Local Courts Officer for Central Province. She was an Administrator and adjudicator. She supervised all the Local courts in Central province. She inspected case records and reviewed decisions where there were complaints. The administration that she did was on Orders of appointment of administrator where interested parties went to the Local Court and they saw the Clerk in charge who assigned a case record number and the details would be entered in a civil register. The party would go into court where the court will inquire. There would be witnesses to support that particular appointment and would produce NRC's. If the court was satisfied it would then appoint and a document would be issued. On 22/05/14 she was visited by Police officers from Lusaka. They ^{came} acme with an Order of appointment for case No 90 of 2014 in which accused was appointed administrator over the estate of Frank Hoare. The officers wanted to know if it was valid. She called for the Civil Register where all records were entered. She found that the case had different names and the claim was not order of appointment of administrator. Only one case record

was found with names of chimwanga AND fostina. As far as she was concerned anything that was not in the register was not valid. Her conclusion therefore was that the order of appointment on case no. 90 of 2014 was invalid. She could not tell as to how it was obtained. She identified the order of appointment marked P25 and the case record No 90 of 2014 marked P26. She also identified the Civil Register book marked P27. P25 did not correspond with P26 and P27.

In XXN she told the court that P24 was Order of appointment in which PW8 was Administrator. It was dated 26/02/04. In 2004 PW8 was the administrator. At this point she was shown the Local Court proceedings of 06/10/04. She had the case record. The plaintiff was accused and defendant was PW8. The complaint was revocation of Administrator. The case was proved and revocation upheld. As on 06/10/04 PW8 was not the administrator. At this point was shown order of appointment of administrator dated 20/12/04. It was accused that was appointed administrator. The case No was 1597/2004. The general receipt was dated 20/12/04. The date of appointment was 20/12/04. As far as she was concerned there was no revocation by PW8 of accused's Administratorship. The order of administrator that PW10 produced was invalid. The one that was produced to her

that day was the valid one. Under normal circumstances they would have not forged. At this point was shown letters of probate dated 04/03/14. The personal representative was accused. She did not know if the letters of probate were renewable. The order of appointment that she brought were fake. The valid ones were the ones that accused had.

PW11 was PRINCE KALALA the Arresting officer based at Police Headquarters under Anti-fraud Unit. In February, 2014 he was allocated a case involving a land dispute of an estate situated in Luanshimba area of Central Province. The property in question was owned by Mr. Frank Hoare who was now deceased. It came out that Mr. Hoare had sold some subdivisions of his land to PW1, PW3 and PW4. Though the transactions took place, ownership was not passed because the property in question was mortgaged to Lima Bank. It was alleged that the administrator who is the accused disputed all the transactions conducted by her late father and that the property though registered in her father's names was her property. He carried out investigations. He went to Min of Lands where he requested for the file relating to the property. He found that the property belonged to Mr. Hoare and that in 2005 an application was made to the Commissioner of lands for issuance of a duplicate copy in

respect of the original copy that had gone missing. The said application was made by accused. Based on the sworn affidavit and letter of appointment of administrator for a replacement, the Min of Lands issued a Certificate of Title. The Duplicate copy was issued in the names of accused. He then summoned PW1 who told him that he bought a subdivision from Mr. Hoare and involved a surveyor. On about three occasions he serviced the loan for Mr. Hoare at Lima Bank. However before ownership could change PW1 left for USA and left PW2 to take care of his land. The original Title deed in the names of Mr. Hoare was with PW4 after she bought part of the land. After the death of Mr. Hoare, accused visited PW4 and told her that she was the new administrator and was told to surrender the Title deed. It was surrendered. On 27/11/14 he visited the site to see the portions. Investigations were also extended to the Local Court authority in Kabwe with a view to verify the letter of appointment of administrator. At the court the Order of appointment in the names of accused were not found as the Reference No quoted was for another case. He interviewed PW8 who confirmed the transactions done by her late father. Regarding the revocation of administrator PW6 disputed the claim by accused. Further that accused sold the said land to various people and gave some to her children and did not share the

proceeds of the sale with other siblings. He then summoned accused. Under warn and caution statement in English the language that she appeared to understand better she gave a free and voluntary reply denying the charges. He charged her for making a false document in relation to the letter of administrator which was purported to have been issued by Kabwe Local crt. . He also charged her for false swearing in reference to the affidavit for ~~swearing~~ that the title deed that was issued to her late father was lost when infact it was the title she got from PW4. He further charged her for uttering a false document to the officials at Min of Lands. Further that accused sold land to other people and deprived her siblings of the proceeds. He identified accused. He visited the Min of lands where he was issued with documents over the property. There were Land Register, certified copies of sale, Order of appointment of administrator in the names of accused and also of PW9, the survey diagram. He identified the Land Register marked P8, the Order of appointment for accused P25 and the one for PW8 P24. Only pieces of documents were retrieved from an incomplete file in the Lands Registry. Among the documents were an Order of appointment of administrator for accused and he further charged her for giving false information to Min of Lands that she lost the Title deeds. He also charged her for false

swearing and Uttering a false document and depriving beneficiaries. Under warn and caution statement in English the language that she appeared to understand better she denied all the counts. At the scene he discovered that beacons done by the surveyor were removed. He identified accused.

In XXN by Def. Counsel he told the court that the state was the complainant in this matter. The complainant for false swearing was the state. The complainant for depriving beneficiaries was Pamela. He did not refer to PAMELA as the complainant in this case. He recalled that he said FRANK HOARE sold part of his land to MWAMBA, HASTINGS AND OSBORNE. He was not able to show the court letters of contracts. PW2 was the CARETAKER. At this point he was shown letter of purchase of Farm Plot 100 hectare of 12/05/95. It was authored by H.M Phiri to PW2. According to the letter PW2 was not purchasing the land. He was not aware that PW2 sold land to Mr. Mukupa. Frank Hoare had a mortgage with Lima Bank. The one who discharged the loan was PW4. He did not know if it was PW1 or not that cleared the loan. He went to Min of Lands. There was an application for a duplicate Title deed. It was by accused. The file was not found. The application was done by Affidavit. He knew because of the procedure. He did not see the Affidavit. He did not have it in

Court. He did not agree that the Court could not determine as to who applied. He did not inquire as to what happened when Title was lost with Min of Lands. It was not true that he failed to trace the Affidavit because it was lost within Min of Lands. As far as he knew an Affidavit was one of the ways. He did not know any other document required for an application for duplicate Title. It was a requirement that an advert must be done. It was the Min of Lands to advertise. There was no such advert. It was irregular for the Min of Lands to issue Title Deed in the names of the accused. At this point he was shown a certificate of publication in the Zambia Daily Mail dated 30/05/2005 and certificate of publication Government Printers dated 10/06/05. It was the advert for the loss of Certificate of Title by accused. It was the accused that applied. Accused was inviting the public to object to her application. It was an application for a duplicate copy of Certificate of Title. He recalled that PW1 did service the loan. The final payment was done by PW4. He had evidence of PW1 servicing the loan. Physically he did not have such documents. FRANK HOARE did sell his land to PW4, PW1 and PW3. The land was subdivided. PW4 told him that she bought land and was in possession of the Title deed. PW4 told him that accused went to her to get the Title deed. It was in 2005 when accused went to PW4. The dates on the

publications were 30/05/2005 and 10/06/05. The publications showed that the Title deed could have been lost before that date. He was told that during that period the document was with PW4. HE did not say that PW8 was the right Administrator. The circumstances showed that accused got the Administratorship fraudulently. PW8 surrendered her Administratorship 2-3 years after the death of the father. It was the family that resolved it. It was not to his knowledge that they went to Court. At this point he was shown a record from the Local Court. The plaintiff was accused and the Defendant was PW8. IT WAS DATED IN 2004. The claim was revocation OF Administrator. The Administrator was ACCUSED AND APPOINTED ON 15/.12/04. The document he brought to Court as the one that he found among documents at Min of Lands. He knew PW10. He could not comment on PW10's testimony that the document for the defense was true and not what she produced. The document was forged by the person who presented it. It was accused that forged it. He had not brought the handwriting expert to show that it was forged. At this point was shown letter of probate from the High Court. It was for the estate of Frank Hoare dated 02/02/04. It was issued on 04/03/14. according to the documents he agreed that accused was Administrator. At this point he was shown printout from Min of Lands dated 04/03/14. Entry No 5 showed mortgage

between Frank Hoare and Lima Bank. Entry No 6 dated 09/0-6/04 the caveator was accused. Entry No 8 showed duplicate copy issued after original lost. He was shown a Gazette Notice. Entry No 12 was local Court Administratorship. A deed of Assent was consenting to passing of ownership to another person. Entry No 10 had deed of assent. It showed that accused passed ownership to herself. At this point was shown the Certificate of Title. It was in the names of accused. It was dated 12/07/05. At this point was shown letter from Messrs Central Chambers to Lands. It was addressed to the Acting Chief Registrar of Lands. It was talking of the same farm. He did not find the letter at Lands. He could not comment if PW8 said that she wrote a letter to Min of Lands. The accused sold portions of land and did not account for the proceeds. The Title holder was the owner of the land. If ownership was not questionable they could not account. There were no different groups in the investigations. At this point was shown letter from Zambia Police. The letter did not say that PW1 forged the document. Frank Hoare sold land to PW1, PW3 and PW4. It was not true that PW1 did not have a document. He did not come across a document attesting to a transaction. There was a photocopy that showed that he bought land. There was a document for the sale of land to PW3. PW4 was surprised to find someone

occupying the land she bought. He had an interview with PW4. He still stood by it that accused forged the document. There was no record that showed accused's appointment. He did not need a handwriting expert. Accused falsely swore at Min of Lands. He was not present. For accused to be given a duplicate copy, she swore. She did not know whom accused swore to. Accused uttered the document to Min of Lands. There was no specific name to whom she uttered to. It was the siblings who were deprived. They came to court through PW8. He did not know if PW8 said that she had not been deprived.

In REXN he told the court that PW8 and others were deprived as accused sold part of the land left by their father. It was the letter of Administrator for Kabwe that was forged. Accused swore falsely at Min of Lands when applying for a duplicate copy of COT. Accused uttered to Min of Lands. He was not conversant with the document by Police at Lusaka Division. He only knew the document of 2013 as Order of Appointment of Administrator and not earlier one. He never came across the letter written by Min of Lands to Central Chambers. It was the surveyor who talked of land being demarcated to PW1, PW3 and PW4. There was no any other Title deed apart from the one in accused's name. A caveat was placed by PW1 who had an interest in the land.

Assent was done by accused to herself. Most correspondence at Min of Lands in the file went missing.

PW12 was AGATHA BANDA the Assistant Chief Registrar at Min of Lands in Lusaka. Some of her duties were to facilitate the issuance of Title deeds, registration of various interest in land. In regard to F/3656 she was approached by accused who applied to have the caveat removed from the property which was placed by PW1. In September, 2012 she wrote a letter to accused and told her that they were unable to remove the caveat because PW1 had demonstrated enough interest on the property. They further advised her that if there were disputes then the matter would be referred to Court. PW1 had documents were Frank Hoare acknowledged receipt of some money paid by PW1 for the purchase of the property. . In October, 2012 she wrote another letter to PW1 requesting the removal of the caveat and advised PW1 for a meeting. Nothing happened. The status was that the caveat was still in force. She identified the letters she wrote marked P9and P10. Information was stored in the Lands Register which she identified P8. P8 had 15 entries. Entry No 8 related to issuance of a duplicate copy of certificate of Title which was lost. She went through the procedure for issuance of duplicate copy and that an application together with a statutory

declaration had to be lodged and the application had to be advertised in the Government Gazette and newspaper. 14 days after that a duplicate copy was issued. A statutory declaration was also referred to as an Affidavit. In the declaration one had to indicate the capacity in which one was applying and also stated that the title Deed was lost or misplaced. The duplicate copy came out in the names of the initial owner whose title was lost. Entry No 10 related to a deed of assent. It was a document which was issued by an Administrator to transfer the property into the beneficiary. If the beneficiary was also the administrator it could also be transferred. The only requirement was proof of being an administrator. In the event that the Administrator wanted to change ownership to themselves they only needed an Order of appointment of administrator. Entry No 13 related to an Assignment. The Assignor was accused and the assignee was GEORGE NAWA assigning subdivision K of the property at a consideration of K90, 000,000 in 2011. This was a sale by accused. The caveat by PW1 was placed in 2011.

In XXN by Def. Counsel he told the court that accused approached her to remove the caveat. He told her that she could not as PW1 demonstrated sufficient interest. PW1 showed her documents were he had paid for the purchase of the property. She was also shown a document where the initial owner said he had no further

claim. SHe did not recall being shown a contract of sale. In 2012 she wrote to PW1 that Lawyers wanted the caveat removed. She did not lift the caveat. She invited them for a meeting. She did not recall if the meeting took off. She was shown the Lands Register. She explained the procedure for placement of lost documents. There was a declaration and affidavit that could be lodged. When accused went to their office she produced the documents. She knew the application through the Lands Register. There was nothing wrong in the declaration. There was nothing wrong in the publication in the Government Gazette and the newspapers. There was nothing wrong with the application. She recalled the entry on the deed of assent. It was a document used by the Administrator to transfer to beneficiary. There was a letter of administration. She did not know if there was anything irregular. If there was anything irregular she was not going to register the property. There was nothing irregular about the deed of assent. According to the letter of administration, the accused was duly appointed as such. If one had a certificate of Title it meant that was the owner of the property. In this case accused had the COT. If one had Title he had a right to deal with property as they pleased. In the declaration and affidavit one gave an explanation and to how and why the Title deed got lost. She was

sure that accused gave reasons. She did not have site of the reasons. Had there been no reasons she was not going to be given. She did not recall as to who discharged the mortgage. Entry No 5 and 7 showed that it was discharged by Lima Bank. She was not aware that PW1 never paid for the land. She was not aware that PW4 paid off Lima Bank. Entry No 6 showed a caveat by accused. She was not aware that PW8 wrote to their office to remove the caveat. She was not aware that the matter was before the High Court. The plaintiff was accused and the defendants were PW1 and others.

In REXN she told the court that in the High Court it showed that accused sued PW1. She summoned PW1 and accused. PW1 demanded that he paid money for the purchase of the property.

The accused was put on defence. She gave evidence on oath and called no witnesses. According to her the Order of Appointment that was produced in Court was not hers. She had the Order of Appointment of Administrator. She applied to the Kabwe Local Court because previous administration of PW8 was revoked. PW8 was her elder sister. There was confusion in the family and she took it upon herself to take the matter to Court for PW8 to be revoked as Administrator. There was ~~trial~~ at Court and she was

issued with Certificate of Judgment and Court proceedings which she identified marked DDP1 and DDP2. She applied to Court for Order of Appointment of Administrator which she identified marked DDP3. DDP3 was issued on 20/12/2004. It was valid for a year and she extended it for 2011 to 2013 until she got probate in the High Court. She identified the renewed Order marked DDP4. She also identified letters of probate marked DDP5. Her father's Title deed got lost and she applied for a duplicate COT. She made an application to Min of Lands for a duplicate copy. It was a written application. She identified the application letter marked DDP6. To that effect was also an Affidavit which she took to Min of Lands. There was also a Deed of Assent, Government printer publication and newspaper advert of the lost Title deed. She identified the Affidavit marked DDP7. No one objected to her application. She was the one that swore the Affidavit. She identified the Deed of Assent which she identified marked DDP8 and the adverts marked DDP9. On the issue of selling land to PW1 she made an investigation with Lima Bank where she was informed that no debt was cleared by PW1 but by PW4. To that effect there was a letter giving PW4 a go ahead to proceed with the purchase of land. She got a copy of that letter and reported to Lusaka Central Police for them to investigate the signature. She talked to PW4 who showed her a

receipt from Lima Bank. She identified the letter marked DDP10. She also identified the letter the Police wrote to her reply marked DDP11. At Min of Lands after she submitted the documents she was issued with the Certificate of Title which she identified marked DDP12.

In XXN she told the court that the original of DDP12 was with her Lawyers Jack Phiri. The lawyer was deceased. It was deposited in anticipation of some land transaction. The land was 3656 Luanshimba. She was giving her daughter land as a gift and not to sell. Her daughter was not a beneficiary to that estate. She was the Administrator of the estate. She agreed that she was still the Administrator of that land though Title had changed. She was aware that an Administrator had duties. One of the duties was to take care of the property. If there were creditors it was the duty of the Administrator to pay. Apart from herself no one was a beneficiary. Frank Kingstone Hoare was her father. He died on 02/02/04. Before he died the property belonged to him. She was aware that the first owners of the land was Tobacco Board of Zambia. At this point was shown P8 and DDP11. She was not aware that the document did not fall under offences which highlighted offences of forensic in nature. She was not aware that the document was not authentic. She was not aware that that was abuse of office by the officer

who wrote it. She was not aware that DDP1 made PW1 to be the complainant and not an accused person. PW8 was her elder sister. PW8 was the Administrator. She was not sure if PW8 had an interest in the land. Accused was present the day her father died at the farm. Accused was there when PW8 was appointed Administrator. Accused did not object to PW8's appointment because she did not understand it. In 1993 she was here in Lusaka. She was aware that there was P3 that showed the tabulation of payments. She saw it here in Court. She still disputed that PW1 had an interest in the land. Accused heard PW8 say that she witnessed her father offer land to PW1. SHE WAS not aware that PW2 was the caretaker at the farm. It was the court that chased PW2 from the farm. It was not because of the Deed of Assent that the land became hers. It was now hers because of the Deed of Assent. She had transacted on the land with the knowledge of PW8. Accused had shared some money with PW8 after the sale of the land. Entry No 13 on P8 was assignment of land to GEORGE NAWA. He was one of those she sold to. There was revocation of order of Appointment of PW8. She was before court when PW8 testified. It was the entire family that asked for revocation. She recalled PW11 from Min of Lands. Accused heard PW12 testify that because of PW1's documents she was able to sanction for a caveat. She recalled the evidence of

PW3. SHE HEARD pw3 say that he dealt with her father to buy two portions of land. She agreed that the buyers dealt with her father. PW4 dealt with her father. Her father was the right person as he was the owner of the property. PW4 was in possession of the COT. She got the Title deed from PW4. It was for her to harmonise things at Min of Lands and not for her to change names. She wanted the court to believe that the document missed after she got them from PW4. The Duplicate copy of the lost COT and the Deed of Assent were together. What Min of Lands gave her was Title in her names and not what she desired. That did not make it easy for her to deal with her land in any way. Giving land to her daughter was not right according to Administratorship. They were 8 of them in the family. The other 7 were not beneficiaries. It was after Probate that her names started appearing. She saw PW10 testify. She heard the testimony of the arresting officer. The arresting officer said that he went to Kabwe and that he got a document from Min of Lands and took it to Kabwe. It was for case No 90/14. That matter related to credit and not Administratorship. She was appointed Administrator on 20/12/04. PW8 was appointed on 26/04/2004 to 06/10/04. PW8 did not evict PW2 because there was unfairness in the property of her father and there was division in the family. She did not know if PW8 recognized the

transaction between her father and PW1. PW1 and PW3 dealt with her father and PW8 and not her.

In REXN she told the court that the property belonged to her. She had the COT. PW8 told court that she had not been deprived. She did not make P3 a schedule of payment. P3 showed that Frank Hoare and PW1 signed. It was her Lawyer who prepared the Deed of Assent and lodged it at Min of Lands. The Police response letter was written by the Police. She got the COT from PW4 because it was required at Min of Lands to remove the mortgage from the land. It was only PW8 among the family members that came to testify. She did not know as to who made the Order of Appointment of Administrator produced by P10 and the Arresting officer. Entry No. 10 on P8 was a deed of assent. It was filed by her Lawyer. Entry No 11 was a COT in her names. Entry No. 12, 13 AND 14 were in her names and was after Probate.

This is the evidence that I received. I now state my findings of fact. At this stage I will deal with each count separately. For Count 1 of MAKING A FALSE DOCUMENT C/S 344(a) of the Penal Code Cap 87 of the Laws of Zambia I find that there was no Order of Appointment of Administrator for Case Record No 90/14.

Having found the fact I must now apply the law to that fact. I ask myself if on this fact the accused has in law committed the

offence charged. Turning to the count if the accused acted in the way alleged then certainly she would be guilty of the offence charged. But has the prosecution established beyond reasonable doubt that it was accused that made the false document?

What evidence is there that she made a false document? There is no evidence to this and in particular that the said case record was not related to issues of Administratorship. I wonder how one can use a document which does not relate to their case. The accused applied to the Local Court for her Administratorship and paid for that as can be shown by DDP3 and a receipt for case record No 1597/2004. At that time PW8 was not an Administrator as she was revoked via Case No 738/2004 in Court 1 of the Kabwe Local Court. There is evidence that clearly shows that accused became an Administrator after revocation of PW8's Administratorship. According to PW8 she was chosen Administrator on 26/02/2004. However, P26 which is the case record 90/14 went to Court on 19/02/14 when accused had way back already gotten her Administratorship on 20/12/2004. Further evidence shows that accused had been renewing her Administratorship as can be shown by DDP4 dated 28/11/2013 which was only expiring on 28/11/2014. This does not make sense. How does one get another document when the same document was still

valid? PW10 the Provincial Local Courts officer told court that as far as she was concerned the Order of Appointment that she produced in Court was invalid and that what was produced by the Defence was a valid one. This confirms that there was no false document before court made by the accused. No evidence was led as to where and how that document P26 came into being for it to be made by accused. Even the Lands Register P8 did not show any entry to that effect. I wonder then where the Arresting officer got that document from. That document is neither here nor there. An individual who received the said fake document at Lands was very important to come and testify on that document. Without evidence to that effect the hands of the Court are tied.

In light of the above I find the case of **MAKING A FALSE DOCUMENT** C/S 344(a) of the Penal Code Cap 87 of the Laws of Zambia NOT PROVED beyond reasonable doubt and I find accused **NOT GUILTY** and **I ACQUIT** her accordingly.

For Count 2 of **FALSE SWEARING** C/S 109 of the Penal Code Cap 87 of the Laws of Zambia I find that no Affidavit was sworn falsely.

Having found the facts I must apply the law to that fact. I ask

myself if on this fact the accused has committed the offence charged. Turning to the count, if accused acted in the way alleged then certainly she would be guilty of FALSE SWEARING. BUT has the Prosecution established beyond reasonable doubt that it was accused that swore falsely?

What evidence is there that accused swore falsely? There is no evidence to this and in particular that no Affidavit was produced by the prosecution that showed that accused swore falsely neither did the state avail the witness whom it was sworn before. It had to take accused to produce DDP7 her Affidavit which was filed at Min of Lands. It was for the State to engage accused on the Affidavit but nothing was done. The Court does not fill in gaps in an ill investigated matter but follow what is on record. It is not known as to which Affidavit the prosecution was talking about and what was false about the said Affidavit. Even the person to whom the said Affidavit was sworn was not brought to Court to testify. The Court here is being asked to speculate on the Affidavit which Affidavit was not brought before Court. Courts make decision on the evidence that they have been given but in this case am being asked to decide on a speculation.

In the circumstances I find the case of **FALSE SWEARING** C/S 109 of Cap 87 NOT PROVED beyond reasonable doubt. I find accused

NOT GUILTY and I ACQUIT her accordingly.

For Count 3 of **UTTERING A FALSE DOCUMENT** C/S 352 OF CAP 87 of the Laws of Zambia I find that no false document was uttered. Having found the fact I ask myself if on this fact the accused has in law committed the offence charged. Turning to the count if accused acted in the way alleged then certainly she would be guilty of Uttering a false document.

What evidence is there that accused uttered a false document? There is no evidence to this and in particular that no Affidavit that was false was produced by the prosecution to show that this was the false document that was uttered. It is not known as to who uttered the said document and to whom it was uttered. Amongst the exhibits produced by the prosecution, none is the Affidavit. The only Affidavit before Court is DDP7 which was produced by accused and DDP7 was not rebutted by the Prosecution to be a false document which shows that there is no any other document apart from DDP7. Unfortunately the said false document was not produced. The court cannot rely on speculations but must be given tangible evidence to that effect which evidence was not produced. Further no physical person from Min of Lands was brought to testify to the effect that he/she received the said Affidavit from accused and believed it to be true when

infact not and wanted that person to act upon such fake document. Further accused at no time did she go to lodge her Affidavit to Min of Lands. Her reasonable explanation was that all documents lodged at Min of Lands were lodged by her Lawyers and she produced to Court her Affidavit which was lodged. There was no rebuttal by the state on that document which shows that the Affidavit for accused was a genuine document.

In light of the above I find the case of **UTTERING A FALSE DOCUMENT** C/S 352 of the Penal Code Chapter 87 of the Laws of Zambia **NOT PROVED** beyond reasonable doubt. I find accused **NOT GUILTY** and I **ACQUIT** her accordingly.

Coming to Count 4 of **DEPRIVING BENEFICIARIES OF THEIR ESTATES** C/S 14(a) of the Intestate and Succession Act Chapter 59 of the Laws of Zambia, I find that the Late Frank Hoare left an estate. I find that accused was appointed Administrator to that estate. I find that accused and her siblings were beneficiaries. I find that no beneficiary has been deprived of the said land.

Having found the facts I must now apply the law to the facts. I ask myself if on these facts the accused has in law committed the offence charged. Turning to the count if accused acted in the way alleged then certainly she would be guilty of depriving

beneficiaries. But has the prosecution established beyond reasonable doubt that accused deprived the beneficiaries?

What evidence is there that she deprived the beneficiaries? There is no evidence to this and in particular that no beneficiary complained to have been deprived. A beneficiary is anyone or any entity who receives property from someone after that someone dies. One can leave all his /her property to his/her children or another group of individuals or to an entity such as a trust. Or one may leave specific items to specific people. They are all considered beneficiaries. One of the beneficiaries who came to Court was PW8 and according to her she had no idea to say that her complaint was that she had been deprived of land. According to her, her complaint was to know how accused became administrator, how she changed her father's Title deed and who chose her and nothing else. For PW1, PW3 and PW4 these are said to have bought land from the Late Kingstone Frank Hoare. They therefore do not qualify as beneficiaries because they were not left with that land but were buyers which Contract they are supposed to enforce in a Civil matter and not in a criminal matter like this one. DDP6 shows that accused was appointed Administrator and further that she applied to Min of Lands for a duplicate copy of the COT and documents such as the

Affidavit DDP7, DDP8 the Deed of Assent and DDP9 the adverts and was granted DDP12 a COT in her names. PW12 went through the process and said that there was nothing wrong with the application and with the said documents. She further went on to state that a Deed of Assent was a document used by a beneficiary or Administrator to have the property vested in him/her. In this case it is clear that accused who the Administrator was assigned the property to herself as beneficiary and Administrator thereby complying with the law. Infact that COT in her names was issued to her by Min of Lands, it is not accused who issued the document to herself. Min of Lands issued that document and if there was something wrong in the issuance then someone at Min of Lands must answer and not the accused.

In the circumstances I find that the case of **DEPRIVING BENEFICIARIES C/S 14(a) of Cap 59 NOT PROVED** Beyond reasonable doubt. I therefore find accused **NOT GUILTY** and **I ACQUIT** her accordingly.

It will suffice to say that this case came as a criminal matter and not a Civil matter where the Court was expected to make declarations as to ownership of the land. Evidence from PW1, PW3 and PW4 showed that they bought land from the late Kingstone Hoare. Their evidence had nothing to do with Making a false document, false swearing, Uttering a false document and

depriving beneficiaries. What the witnesses were looking for is a declaration of ownership of land which unfortunately was not the case before Court. I would like to urge the state to scrutinize which cases can be brought in a criminal fashion by doing thorough investigations and advising the complainants accordingly as justice is for both the complainants and the accused person.

DELIVERED IN OPEN COURT THIS.....DAY OF.....2017.

HON. A.N. WALUSIKU

MAGISTRATE I

