



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL APPEAL NO.48 OF 2016**

**JAPHETH MURIUNGI M'ANAMPIU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*( From the original conviction and sentence in criminal case No. 938 of 2015 of the Senior Resident Magistrate's Court at Githongo by Hon. C.A Mayamba – Senior Resident Magistrate)*

**JUDGMENT**

**JAPHETH MURIUNGI M'ANAMPIU**, the appellant, was convicted for the offence of obtaining money by false pretences contrary to section 313 of the Penal Code and for the offence of personating contrary to section 382 of the Penal Code.

The particulars of the offence were that on 17<sup>th</sup> July 2015 at Meru Town, Imenti North District of Meru County, jointly with others not before court with intent to defraud, obtained from **DORCAS MUKOMUGAMBI MUTURA** Kshs. 600,000/= by falsely pretending that they were in a position to sell to her land parcel number **ABOTHUGUCHI/U-KAONGO/329** measuring 0.5 Ha. a fact they knew to be false. On the same day and at the same place, with intent to defraud, he falsely presented himself to be **JUSTUS KIRIMI MBURUGU**.

The appellant was fined Kshs. 200,000/=in default to serve two years imprisonment and in count two he was fined 100,000/= in default to serve twelve months imprisonment. He now appeals against both conviction and sentence.

The appellant was in person. He raised two grounds of appeal as follows:

- 1.That the learned trial magistrate erred in law and in fact by convicting without sufficient evidence.
2. That the learned trial magistrate erred in law and in fact by failing to consider the appellant's defence.

The state opposed the appeal through Mr. Odhiambo, the learned counsel.

The facts of the prosecution case were briefly as follows:

The complainant was looking for a piece of land to buy and she send some people to scout for her for the same. Later, she was informed that land was available. The appellant claimed to be the owner of land parcel number **ABOTHUGUCHI/U-KAONGO/329** and that his name was **JUSTUS KIRIMI**

**MBURUGU.** They negotiated and agreed the purchase price was to be Kshs.700,000/=. He was paid a down payment of Kshs.600,000/= Later it turned out that he was not **JUSTUS KIRIMI MBURUGU** and the land was not his. He was arrested and charged.

The appellant denied any involvement in the offences.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32.**

**Dorcas Mukomugambi Mutura** (PW1) was the complainant. she testified that she had asked Samson Kiarantia, a neighbour to assist her in looking out for a parcel of land on sale for she was interested in purchasing one. Later he informed her of a parcel on sale at Kaongo. The two went to see the land and later met the appellant at Kariene. The appellant identified himself as Justus Kirimi and that he was the proprietor of the said parcel of land. At Kariene she was with **Samson Kiarantia**(PW2) and **Gladys Kanyua**(PW3) while the appellant was with Gerald. Like the complainant, PW2 and PW3 identified the appellant as the person who identified himself as Justus Kirimi and who offered the land in issue for sale to the complainant. These witnesses testified that the appellant was the person who was paid Kshs. 600,000/= by the complainant.

Although there was evidence of identification parade, in my view this was not necessary, for it was three months from the transaction. It is common knowledge that negotiations take time and these people apart from the initial meeting at Kariene, they also met at an advocate's office where the appellant was paid. This was an issue of recognition.

Chief Inspector **Alex Mwongera** (PW5) is a document examiner. He examined the specimen signatures of the appellant and the disputed signature and concluded that they were made by the same hand.

Justus Kirimi Mburugu(PW6) testified that he was the proprietor of land parcel number **ABOTHUGUCHI/U-KAONGO/329**. The identity card that was used though had his name, it had a different number. It had number **11457358** whereas his was number **11027596**.

In her evidence, **Julieta Mutitu** (PW10) testified that she works as a registrar of persons in Meru Central. When she checked her records in respect of identity card number **11457358**, she established that it belonged to one **Yasin Aweya Jeylani**. This was a confirmation that the identity card that was used in the land sale agreement was a forgery.

The appellant gave a defence that amounted to denial of any involvement in the offence. The learned trial magistrate considered it before dismissing it.

The ingredients of the offence of obtaining by false pretences contrary to section 313 of the Penal Code were enumerated in the case of **AMUGO Vs. REPUBLIC HIGH COURT CRIMINAL APPEAL NO. 320 OF 1980 as follows:**

*The offence of obtaining by false pretences has seven possible ingredients which have to be proved beyond doubt before an accused person is convicted. They are (a) a false representation (b) which is made (c) by words or writing or conduct (d) of a matter of fact (e) either past or present (f) with knowledge of the falsehood or without belief that the presentation is true, and (g) the representation causing the giver to part with the thing obtained.*

In the instant case these ingredients were proved to the required standards. The appeal on conviction and sentence is accordingly dismissed.

**DATED** at MERU this 27<sup>th</sup> day of April, 2017

**KIARIE WAWERU KIARIE**

**JUDGE**