



**Nyambura t/a John Kariuki Karuri v Republic (Criminal Appeal E008 of 2024) [2025] KEHC 3654 (KLR) (Crim) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL APPEAL E008 OF 2024  
KW KIARIE, J  
MARCH 24, 2025**

**BETWEEN**

**JOSIAH KIMOTHO NYAMBURA T/A JOHN KARIUKI  
KARURI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original judgment in Criminal case No. E1142 of 2021 of the Principle Magistrate’s Court at Engineer by Hon D.N. Sure – Principal Magistrate)*

**JUDGMENT**

1. Josiah Kimotho Nyambura, alias John Kariuki Karuri, the appellant herein, was convicted of obtaining by false pretences contrary to section 313 of the *Penal Code*.
2. The particulars of the offence are that on various dates between the 23rd of November 2020 and the 25th of January 2021, in the Flyover area of Kinangop South sub-county, within Nyandarua County, together with others not before the court, with intent to defraud, obtained from Grace Kariuki a sum of Kshs. 3,455,822.00 by falsely pretending they would sell her fish food supplements, which they knew to be untrue.
3. The appellant was sentenced to pay a fine of Kshs.2,000,000.00 in default to serve two years imprisonment. He was dissatisfied and filed this appeal in person. He raised the following grounds of appeal:
  - a. The learned trial magistrate erred in law and, in fact, by concluding that the telephone number 0722XXX197 was recovered from the appellant despite the absence of evidence linking the appellant to that number.



- b. The learned trial magistrate erred in law and fact by finding that the M-Pesa statement produced by the complainant in court, as exhibited by PW1, was admissible in law and authenticated as required, thereby failing to comply with Sections 106A-1061 of the *Evidence Act*, Cap 80 of the Laws of Kenya.
  - c. The learned trial magistrate erred in law and fact by linking me to the exhibits alleged to have been used and recovered despite the absence of an inventory.
  - d. The learned trial magistrate erred in law and fact by concluding that the prosecution had established its case beyond a reasonable doubt.
  - e. The learned trial magistrate erred in law and fact by sentencing the appellant to pay a fine of Kshs. 2,000,000, with a default period of two years when it should have been one year.
4. The respondent did not file any grounds of opposition or submission.
  5. This is the first appellate court. As anticipated, I have thoroughly analyzed and evaluated all the evidence presented before the lower court and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the renowned *Okeno vs Republic* [1972] EA 32 case.
  6. 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 (Kisumu) Criminal Appeal No. 320 of 1980 (unreported)* 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 as follows:

    - 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.

The court stated that all eight ingredients must be established beyond reasonable doubt for a conviction to be obtained.
  7. It is trite law that for an action to amount to a false pretence, it must be of past or present facts, not future facts. Lord Devlin, in the case of *J. R vs Dent* [1955] 2 Q.B. 594, stated:  

...a long course of authorities in criminal cases has laid down that a statement of intention about future conduct, whether or not it be a statement of existing fact, is not such a statement as will amount to a false pretence in criminal law.

In this case, I will aim to determine whether the prosecution has established the eight elements to the required standards and whether the facts were present or past.
  8. Grace Wambui Kariuki's (PW1) evidence reveals a well-calculated scheme involving a web of con artists. The appellant was the leading player in the scheme. She paid several amounts of money on diverse



dates, and when the appellant was arrested, the other players switched off their phones. The appellant opted not to cross-examine the complainant. Her evidence, therefore, went unchallenged.

9. From the outset, the appellant was aware that the intention was to acquire money from the complainant. The prosecution demonstrated all the elements of the offence of obtaining by false pretences.
10. Section 28 (2) of the *Penal Code* provides:

In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

11. I agree with the appellant that the default sentence should be one year. I set aside the default sentence of two years imprisonment and substitute it for a one-year imprisonment.
12. The upshot of the above is that the appeal against the conviction lacks merit, and I hereby dismiss it. However, the appeal regarding the sentence is substituted to the extent explained above.

**DELIVERED AND SIGNED AT NYANDARUA THIS 24<sup>TH</sup> DAY OF MARCH, 2025.**

**KIARIE WAWERU KIARIE**

**JUDGE**

