



REPUBLIC OF KENYA



**Asembo v Republic (Criminal Appeal E010 of 2025)  
[2025] KEHC 7970 (KLR) (Crim) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL APPEAL E010 OF 2025  
DR KAVEDZA, J  
JUNE 9, 2025**

**BETWEEN**

**ROBERT AKUMU ASEMBO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence delivered by Hon. Kabuya I.M (SPM) on 23rd January 2025 at Kibera Chief Magistrate's Court criminal case no. E1516 of 2018 Republic vs Robert Akumu Asembo)*

**JUDGMENT**

1. The appellant was charged, and after a full trial convicted for the offence of obtaining money by false pretences contrary to section 313 of the [Penal Code](#). The particulars are that on the 2<sup>nd</sup> day of September 2016 and the 31<sup>st</sup> day of March 2017 at Top Plaza Kilimani within Nairobi County, the appellant obtained a total of Kshs. 2,500,000 from one Tai Sujun by falsely pretending that he was in a position to sell her a piece of land at Eastern by-pass measuring 0.7615 ha a fact he knew was false and untrue. He was sentenced to pay a fine of Kshs. 800,000 in default to serve 12 months imprisonment.
2. Being dissatisfied with his conviction and sentence he filed an appeal challenging the same. In his appeal, he contended that his right to legal representation by an advocate was undermined and that the prosecution failed to discharge their burden of proof.
3. This is the first appellate court, and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



4. The complainant, PW1 Tai Sujun, testified that she was well acquainted with the appellant. She initially issued him a cheque of Kshs. 900,000 for a parcel of land located along the Eastern Bypass, but later discovered that the title deed she received was fake.
5. Subsequently, the appellant represented her as her advocate in a transaction involving a company known as Woodland Ventures. She transferred Kshs. 1,600,000 to his bank account after the earlier cheque was dishonoured. The funds were intended for the purchase of land valued at Kshs. 40 million. To her dismay, she later discovered that the land was registered in the name of one Joseph Kariuki.
6. In support of her testimony, she produced several documents, including a KCB money transfer slip dated 2nd September 2016, a cheque dated 18th March 2017, a receipt dated 31st March 2017, a certificate of title in the name of Joseph Kariuki, a copy of the appellant's bank statement, a letter dated 11th November 2016, a sale agreement, a transfer document, and a copy of a title in her name.
7. PW2, Police Constable Mwai, corroborated the complainant's account. He confirmed that the appellant had sent a WhatsApp message indicating that the land transfer was in progress but failed to furnish the complainant with the title deed or tax documents despite repeated demands. Upon realising that she had been defrauded, the complainant reported the matter at Kilimani Police Station.
8. At the close of the prosecution's case, the trial court found that a prima facie case had been established and placed the appellant on his defence. In his testimony, the appellant admitted that the complainant had instructed him in a conveyancing matter and that he had prepared a sale agreement, witnessed by Advocate Stanley Manduku. He confirmed receipt of Kshs. 900,000 and Kshs. 1.6 million but claimed that the delay in transferring the property was due to issues at the land registry. He further stated that he had engaged in alternative dispute resolution with the complainant and refunded her Kshs. 500,000. He denied committing any offence, asserting that he never had land to sell.
9. This court has re-evaluated the evidence on record, as well as the rival submissions made by parties to this appeal. Section 313 of the *Penal Code* (Cap 63) Laws of Kenya provides that;

“ Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.”
10. The prosecution is required to establish that the appellant obtained something capable of being stolen, obtained it through a false pretence, and with the intention to defraud.
11. The appellant admitted in his testimony that he received funds from the complainant with the understanding that he would facilitate a conveyancing transaction for the purchase of a parcel of land in Ruiru valued at Kshs. 40 million. He acknowledged that the complainant issued him a cheque for Kshs. 900,000 and later transferred a further sum of Kshs. 1.6 million to his account. These payments were not denied. On the face of it, the amounts in question constituted property capable of being stolen, within the meaning of the *Penal Code*.
12. What makes the matter more serious is the fact that the appellant purported to transfer ownership of land registered in the name of a third party Joseph Kariuki, to the complainant. This, in my view, significantly heightens the inference of fraudulent intent. I concur with the trial magistrate that the appellant, being a practising advocate, had a duty to conduct proper due diligence. He should have verified the authenticity of the title and ensured that the land was not already subject to another transaction. His failure to do so, despite being in a professional position of trust, adds weight to the prosecution's case and undermines the credibility of his defence.



13. Having reviewed the evidence on record and the appellant's explanation, I am satisfied that the conviction was well-founded. The appellant's claim that he was not given an opportunity to clarify the delay in transferring the land does not, in my view, raise a reasonable doubt. The totality of the evidence presented at trial supports the conclusion that the complainant was induced to part with substantial sums of money based on false or misleading representations.
14. Accordingly, I find that the prosecution discharged the burden of proof beyond reasonable doubt. The conviction is therefore upheld.
15. On sentence, the appellant was fined Kshs. 800,000, in default to serve 12 months imprisonment. During sentencing, the trial court considered the pre-sentence report and exercised its discretion appropriately. I find no basis to interfere with the sentence imposed.
16. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF JUNE 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant absent

Mutuma for the Respondent

Tonny Court Assistant

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