



REPUBLIC OF KENYA



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**Omwanda v Republic (Criminal Appeal E011 & E012 of 2024  
(Consolidated)) [2025] KEHC 8199 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8199 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E011 & E012 OF 2024 (CONSOLIDATED)**

**AC BETT, J  
JUNE 10, 2025**

**BETWEEN**

**ALFONCE BUHURU OMWANDA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being appeals arising from the decision of Hon. Caroline Cheruiyot, RM in  
Kakamega CM Criminal Case No. 856 of 2023 delivered on 9th February 2024)*

**JUDGMENT**

1. This judgement is in respect of the appeals that were consolidated and proceeded as one for purposes of expeditious disposal.
2. The Appellant was charged in Criminal Case Number 555 of 2023 with the offence of obtaining by false pretence contrary to section 313 of the *Penal Code*. The particulars were that on 5<sup>th</sup> November 2018 at Shilohi Area within Kakamega County with intent to defraud he obtained Kshs. 320,000/= from Beatrice Khabere Amanyia by falsely pretending that he was in a position of selling to her a land registration Number Butsotso/Indangalasia/3352 measuring 0.4 hectares a fact he knew to be false.
3. In Criminal Case No. 856 of 2023 the Appellant was charged with the offence of obtaining by false pretence, the particulars being that on 18<sup>th</sup> January 2021 at Matete Advocate's office within Kakamega township, Kakamega County with intent to defraud he obtained Kshs 300,000/= from Andrew Aswani Okoba by falsely pretending that he was in a position of selling to him land registration No. Butsotso/Indangalasia/3352 measuring 0.2 hectares a fact he knew to be false.
4. The Appellant denied both charges and after a full trial he was convicted and sentenced to serve 2 years in both matters.



5. Aggrieved with the convictions and sentences, the Appellant filed two separate appeals which were later consolidated. The Appellant challenged the convictions in both matters on the ground that the charges against him were not proved to the required standard. The Appellant also faulted the prosecution for failing to call crucial witnesses hence prejudicing its case. The Appellant also faulted the sentence on the ground that it was harsh and excessive in the circumstances of the case.

### **Prosecution's Case**

6. The prosecution in Criminal Appeal No. E011 of 2024 called six (6) witnesses in a bid to prove the case. PW1 was the complainant Beatrice Khabere Amanywa who testified that on 5.1.2018, she entered into a written agreement with the Appellant to purchase ¼ acres of land comprised in L.R No. Butso/Indangalasia/3352 at a consideration of Kshs 320,000/=. She testified that upon conducting an official search and confirming that the title was in the Appellant's name, they wrote the agreement and she paid the entire sum after which the Appellant gave her vacant possession. She recalled that she settled on the land, constructed a house thereon, and lived there for six years only to later realize that the land belonged to Esther Kisaka. In an effort to follow up the issue with the Appellant, she reported the Appellant to the Assistant Chief then the Chief then the D.O and finally to the police. Her prayer was that the Appellant returns her money or issues her with a title deed. On cross-examination, she said that the Appellant's wife was present during the transaction.
7. Victor Shalima (PW2) was the complainant's father and a witness to the agreement. He recollected that he witnessed that two parties enter into the agreement after conducting a search over parcel No. Butso/Indangalasia/3352 and established that it was in order. He confirmed that he saw the complainant pay the Appellant the Kshs. 320,000/= and after that, the Appellant showed them the land which later turned out to be Parcel No. Butso/Indangalasia/3353 which had been sold. According to him, the complainant entered the land, erected two semi-permanent houses, and has been living there since 2018.
8. PW3 Benard Savayi Kenywa testified that his mother called him and informed that she had found land to buy and needed a witness. They met the Appellant and his mother paid Kshs. 320,000/= and after the sale agreement had been duly signed, the Appellant showed them the land which they later learnt had been sold to someone else. He said that although the mother was on the land, it is not the land that they had bought.
9. The Assistant Chief Alex Mutende Oremo testified as PW4 and recalled that he received a complaint from PW1 regarding an agreement for sale of land and on 30.7.2021 he invited her, the Appellant, his wife and son for a meeting during which it emerged that the Appellant had sold land from LR. No. Butso/Indangalasia/3352 to the complainant but settled her on LR. No. Butso/Indangalasia/3353 belonging to Esther Isakha who is deceased. On 2.8.2022, he, the parties and surveyors visited the land where it was established that Parcel LR. No. Butso/Indangalasia/3352 was on the upper side while the Appellant gave the Complainant land on the lower side which is parcel LR. No. Butso/Indangalasia/3353 belonging to Esther.
10. PW4 said that he advised the Appellant to give the complainant the rightful land as the Appellant said that he was ready to surrender the land to the Complainant once Benard her son removed the caution. To facilitate the transfer, he advised the Appellant to lodge a complaint in respect of Esther Kanyana Tsisanga as he claimed that she had fraudently transferred the land to her name for he had never sold the same to her.



11. PW5 was the Area Chief and testified that when he called the parties, the Appellant had promised to give the complainant an alternative portion in LR. No. Butso/Indangalasia/3352, he had not done so.
12. PC Benard Gowa (PW6) was the investigating officer and confirmed that he carried out the investigations where he established that the Appellant had sold land comprised in LR. No. Butso/Indangalasia/3352 to the complainant but settled her on a totally different parcel of land which had been sold to someone else.
13. In defence, the Appellant who called three witnesses conceded that he sold the land but stated that since there was no Surveyor, he did not know that he had settled the complainant on a different parcel that is LR. No. Butso/Indangalasia/3353 and not LR. No. Butso/Indangalasia/3352. He said that he never intended to defraud the complainant. He said that he had never transferred any of his land. On cross examination he said that the complainant was free to go for the title.
14. DW2 was Agnes Naliaka the Appellant's wife who confirmed she witnessed the signing of the Agreement and exchange of money.
15. DW5 was Benard Omwena and the Appellant's son. He testified about being questioned by Benard Gowa from the DCI and he had recounted to him that the Appellant had sold one (1) acre of land to Ethina Kibisu who had built a house thereon then left for Nairobi. Then in 2020, someone claimed that Esther Kanyanga Tisaka had bought the land from Ethina. The man by name Isaka had a title which had been processed comprising 1 ½ acres instead of 1 acre and when asked to bring Esther or the Agreement, claimed that Esther had run mad.
16. DW4, Alex Oluoch Muchwana reiterated the Appellant's testimony and said that the Surveyor was to blame for the mix up in titles.
17. In regard to Criminal Appeal E012 of 2024 the prosecution also called six witnesses.
18. The complainant was Andrew Aswani Okoba who testified that on 1.12.2017, was rather uncle. He recalled that he entered into a written agreement with the Appellant to purchase ½ acre in LR No. Butso/Indangalasia/3352 at a consideration of Kshs. 300,000/= which he paid in the Advocate's office in the presence of Peter Changaba and Edward Andigo. The Appellant showed him the land and he constructed a semi-permanent house immediately. The complainant produced as PExh 1 a certificate of official search reflecting the land as LR. No. Butso/Indangalasia/3352 comprising 0.4 hectares (1acre).
19. The complainant produced the agreement of sale and stated that the Appellant used the names Alfonse Buhuru Onmwanja ID No 19XX843 but the certificate of titles reflects the national Identity Card Number as 19XX431. However, the Appellant later swore an affidavit in which he averred that his national identity card number is 391XX222. The affidavit was produced as PExh3.
20. It was the complainant's evidence that when he wanted to process the title to the land, the Appellant reassured him that the land was his and he should continue staying there. He reported to the Assistant Chief who summoned the Appellant and asked him if the land he had sold was his and he confirmed that both were his land. The Appellant then stated that his names were not tallying with the names in the title and he did not have an identity card so he would swear an affidavit (Pexh 3) to enable the Registrar correct the names.
21. The complainant further recalled that thereafter, they attended the Land Control Board where the Appellant signed the documents for subdivision after which the complainant took Surveyor Rama to survey and subdivide the land. However, the Appellant removed the beacons that the surveyor had



- placed on the land saying that the purchasers should stay where he had placed them thereby prompting him to lodge a complaint at the DCI.
22. On cross-examination, the complainant said that after the Appellant had signed the Land Control Board consent forms, his son went and stopped the transfer claiming that the family had not been involved. He reiterated that he bought the land from the Appellant who showed him the land and he occupied it.
  23. PW2, Peter Changaba who was a cousin to the complainant recalled that he was a witness when the transaction as completed and saw the complainant pay the money. According to him the Appellant was wrong in selling a different parcel of land and settling them on a different portion.
  24. PW3 was Edward Andigo Amunaibi who testified that he was a witness to the agreement although the Appellant's wife and son were absent. He stated that to date, the Appellant had not given the complainant his title.
  25. The evidence of the Chief and Assistant Chief were adopted as evidence after which PW6 PC Benard Gowa took the stand and testified that they had carried out investigations and confirmed that the Appellant had sold to the complainant the same land and settled him on a different parcel of land and that he had stated that the Appellant was not cooperative after he had been reported to the Assistant Chief and even after being directed to settle the complainants in their rightful place, he refused and insisted that they should remain where he had settled them already.
  26. On cross-examination, PW6 said that the land had already been sold to Esther but he did not get her although he tried to get her.
  27. In his defence, the Appellant said that he knew the complainant and the complainant had purchased  $\frac{1}{2}$  an acre of land from Lawrence Mazoa and he witnessed the agreement. He said that he had earlier sold the land to Mazoa who had ran into financial trouble and decided to sell the land. He insisted that when he sold the land to Mazoa, Mazoa had conducted an official search and confirmed the title as okay but that someone else had introduced a new number.
  28. On cross-examination, he conceded that in the agreement of sale with the complainant, he is the vendor and Mazoa was a witness. He denied willingly defrauding the complainant.
  29. DW2 was Lawrence Mazoa who testified that he had known the Appellant since 2002 and that they had entered into an agreement where he bought land at Kshs. 75,000/=. He said the agreement of sale was displaced but that in the year 2018 he had sold the land as his wife had been amputated after a traffic accident. He said that he informed the Appellant of his intention to sell the land and the Appellant told him that there was a buyer whom they later met and agreed on the purchase price. DW2 said that since the Appellant had not transferred the land to him, the Appellant was indicated as the vendor. He said that he received Kshs. 300,000/= from the complainant who had conducted a search and later constructed there and still lives there.
  30. On cross-examination, DW2 stated that the land he bought was parcel LR. No. Butso/Indangalasia/3352 and he bought it in the year 2007 and that the title is the same one that the complainant built on.
  31. The defence also adopted the evidence of Benard in Criminal Case No. E855 of 2023 as DW3. Alex Aluoch Mukhwana then testified as DW5 and said that he knew that the complainant had bought land from Mazoa which land was still in the Appellant's name at the time of sale. On cross-examination, he said that the money was received by the Appellant who later gave it to Mazoa. He was a witness to the transaction.



### **Appellant's Submissions**

32. The Appellant submitted that at time of sale of the land by the Appellant to Beatrice, the land was in his name and he acted in good faith openly and without any intention of fraudulently obtaining money from the purchaser who settled on the land and is still in occupation to date.
33. With respect to Andrew Aswani Okoba the Appellant submitted that he purchased the land from one Lawrence Mazoa with the Appellant's consent, was settled on the land and is in occupation and utilization to date and the Appellant contends that the problem arose with the description of the property on paper which was occasioned not by the parties but by the Surveyor and/or the Land Registry.
34. The Appellant submitted that there was no obtaining by false pretence as the Appellant was the registered owner and occupier of the parcel of the land in respect of which the complainants conducted due diligence and confirmed that the land sold to them was registered in the name of the vendor.
35. The Appellant further submitted that the allegation that he had sold land that did not belong to him was not supported. No witness was called to prove that the land did not belong to the Appellant at the time of the sale. No certificate of official search was produced to prove ownership by another person, nor proof of a case of impending eviction from the land.
36. Regarding criminal case No. 856 of 2023, the Appellant submitted that there were errors as the charge sheet reads that the agreement of sale was made on 18.1.2021 while the agreement made on 1.12.2017. Further, that Lawrence Mazoa appeared in court and testified that he was the one who sold the land to the complainant and not the Appellant.
37. Regarding the issue of false pretence, the Appellant submitted that the final court did not address the issue and, in any event, he could not pretend as the land lawfully belonged to him and the prosecution did not lead evidence to show that the property had been encumbered by a 3<sup>rd</sup> party.

### **Respondent's Submissions**

38. The Respondent submitted that false pretence was exhibited in the two matters, the first striking part being that in both cases the land being sold was the same. The Respondent queried how a person can sell the same land four times without him knowing that it was wrong to get into such transactions. The Respondent also submitted that it was evident that the Appellant had sold the land to Lawrence Mazoa in the year 2007 and by a skewed scheme, sold the same land to Andrew Aswani Okoba in 2017 knowing very well that he had already sold the same to Mazoa.
39. The Respondent further referred to the Appellant's use of different names of Alfons Mirundu Omwanda and Alfonse Buhuru Omwanda, and the national identity card numbers as discrepancies that show that the Appellant was in a scheme to defraud the complainant, Andrew.
40. The Respondent contended that by settling Beatrice and Andrew on a parcel of land that was different from the one that they had agreed to buy, the Appellant was acting in pursuit of his scheme to obtain money by false pretence. The Respondent urged the court to take judicial notice of the fact that the Appellant had in 2017 settled Andrew on Parcel LR. No. Butso/Indangalasia/3352 and cannot be said to have mistakenly settled Beatrice on Parcel LR. No. Butso/Indangalasia/3353 hardly a year later. It was the Respondent's submissions that the Appellant's actions were indications of a deliberate scheme to defraud Beatrice. More so since the Appellant had long sold the land to Mazoa in 2007.



41. The Respondent argued that the facts speak for themselves and the Appellant had sold all his land (if at all it was his land as the names and identity card numbers on the title were different from what appeared on the Appellant's identity card) but did not want to part with ownership and that he retained the titles and connived to defraud unsuspecting buyers hence causing the complainants to part with their money. The Respondent relied on the case of *Gerald Ndoho Munjuga v Republic* [2016] KEHC 6508 (KLR).
42. In regard to the ground that the prosecution failed to call crucial witnesses, the Respondent cited section 143 of the *Evidence Act* and the case of *Julius Kalewa Matunga v Republic* [2006] eKLR and said that it was not mandatory that the State call all witnesses and in particular the Surveyor as the fact of survey as confirmed by the evidence was not contended.
43. Regarding the sentence, the Respondent submitted that the same was well deserved as the sentence prescribed by law for such offence is 3 years.

### **Analysis and Determination**

44. This being a first appeal, the duty of the court is as laid down in *Okeno v Republic* (1972) EA 32 when the Court of Appeal of East Africa held that the duty of the first appellate court is to analyze and re-evaluate the evidence that was before the trial court and come up with its own conclusion on the evidence bearing in mind that unlike the trial court did not have the privilege of seeing and hearing the witnesses. The court stated thus:-

“It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions, it must make its own findings and draw its own conclusions.”
45. The issues to be determined by this court is whether the prosecution proved its case against the Appellant in the two cases, and whether the sentence was excessive.
46. The burden of proof in criminal cases rest with the prosecution which is required to prove its case against the Accused beyond reasonable doubt. In *Stephen Nguli Mulili v Republic* [2014] EKLR the court held that it is not in doubt that the burden of proof lies with the prosecution. The locus classicus on this is the case of *DPP V WOOLMINGTON*, (1935) UKHL 1 where the court eloquently stated that the “golden thread” in the “web of English common law” is that it is the duty of the prosecution to prove its case.
47. Section 313 of the *Penal Code* defines the offence of obtaining by false pretence as follows:-

“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 misdemeanor and is liable to imprisonment for three years.”
48. The ingredients of the offence were extrapolated in the case of *Gerald Ndoho Munjunguna v Republic*(supra) where Matiri J quoted with approval the case of *Botswana High Court in Lesholo & Another v the state* and where the court held:-

“To prove the offence of obtaining by false pretence, the accused must by a false pretence, with intend to defraud, obtain something of value capable of being stolen from another



person. The prosecution must prove the false pretence together with a fraudulent intention in obtaining the property of the person cheated.

A false pretence has been held to be a representation by the accused person which to his knowledge is not true. A false pretence will constitute a false pretence when it relates to a present or past fact or facts. It is not a false pretence if it is made in relation to the future even if it is made fraudulently. Where however, the representation speaks both of a future promise and couples it with false statements of existing or past facts the representation will amount to a false pretence if the alleged existing facts are false.[8]

...The representation must be made with the specific purpose of getting money from the complainant which he/she would not have given had the true facts been revealed to him.”

49. In the earlier case of *Samat Bhima v Keswala v Republic* [1992] eKLR, the court broke down the ingredients and stated 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. See *Amugo v Republic* High Court Criminal Appeal No 320 of 1980.”

50. For an Accused to be convicted of the offence with which the Appellant was charged, the prosecution needed to prove the following elements:-

- a. That the Appellant made a statement or acted in a way that was demonstrably untrue regarding the land being sold in that he sold land comprised in LR No. Butso/Indangalasia/3352 when he intended to settle the complainants on LR. No. Butso/Indangalasia/3353.
- b. That at the time of making the representation the Appellant must have known that the representation was false or that he made it without believing it to be true.
- c. That the Appellant must have intended to deceive the complainants and obtain money from them and did obtain money from them that he would not have obtained had the complainants known the true facts.
- d. That the Appellant obtained money from the complainant as a result of his false representation to them and their reliance on it.

51. To establish the first element of the offence, it was incumbent on the prosecution to produce the certificates of official search with respect to the two parcels of land as well as a cadastral map that would assist the court in identifying the exact position of the land that was being sold and the parcel of land where the complainants were settled. Since the two parcels of land are adjacent to one another, it was



necessary for the prosecution to demonstrate that the Appellant was aware that the land he was settling the complainants on was not the specific land he had sold to them.

52. The prosecution needed to demonstrate that the Appellant knew that he was settling the complainant on LR No. Butso/Indangalasia/3353 when he had represented to them, he was selling to them land in LR. No. Butso/Indangalasia/3352. Such demonstration could have been done by a Surveyor during the presentation of the cadastral map. I note that although the Assistant Chief who testified as PW4 said that he visited the subject property on 2<sup>nd</sup> August 2022 accompanied by the Surveyors from the two complainants where upon they established that parcel LR. No. Butso/Indangalasia/3353 was on the lower side, neither that Surveyor nor the Surveyor who did the first survey that resulted in the two parcels of land were called to give evidence and confirm that the Appellant knew the exact position of the land. The failure to call the said Surveyors created a gap in the prosecution's case which had not been resolved by the end of the trial as knowledge is critical to the offence.
53. False pretence is defined Section 312 of the *Penal Code* as follows:-

“ Any representation, made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.”
54. The parties were in agreement that they conducted a search on LR. No. Butso/Indangalasia/3352 and established that it belonged to the Appellant. Since he was registered owner of the land, this court is of the view that the land existed and the Appellant had capacity to sell the same. However, the Appellant did not settle the complainants on the said land but on land parcel No. Butso/Indangalasia/3353. At the end of the case, the question that begged answers was; did the Appellant know that he was settling the complainants on LR. No. Butso/Indangalasia/3353.
55. The common defence that was raised by the Appellant in the two cases was that he sold the two complainant's land that was available and even delivered unto them vacant possession but it turned out that there was confusion in the registration of titles and not on the ground.
56. It was not in dispute that the Appellant presented himself to the complainant as being the owner of all that parcel of land known as LR. No. Butso/Indangalasia/3352 which he wished to sell. It is also not in dispute that the Appellant received money from both complainants in consideration of the sale. Pursuant to the agreements of sale which were executed one year apart, the Appellant pointed out the portion of land sold to each of the complainants who took possession of the same and developed the same.
57. In respect to Beatrice Khabera Amany, her evidence was that she lived on the land peacefully for 6 years when other persons claimed ownership of the land and it is then that she discovered that the land belonged to one Esther Kisaka. The prosecution's evidence was that the Appellant settled Beatrice on LR. No. Butso/Indangalasia/3353 which he had previously sold and which was registered in the name of Esther Kisaka. Efforts to have the Appellant who claimed that he had not sold the land to the said Esther Kisaka take one legal proceeding against Esther Kisaka were fruitless again that led to criminal proceedings being instituted against him.
58. In regard to Andrew Aswani he was shown the land constructed on it and occupied it and it was only when the Appellant was not forthcoming when asked to process the title that he discovered that the land that he was occupying was not the one he had bought. This was after a complaint had been lodged with the Chief and a Surveyor visited the land.



59. Concerning the submissions that the Appellant's guilt should be inferred from his actions in selling the same land four times, the evidence on record established that LR. No. Butso/Indangalasia/3352 measured 0.4 hectares which is one acre. The Appellant said that he sold to Lawrence Mazoa land in 2007 and this was confirmed by Lawrence Mazoa. According to the defence, the same land that had been sold to Mazoa was the one that was sold to Andrew Aswani vide the agreement of sale dated 1.12.2017 (PEXH2) where the land sold was described as 0.2 hectares. By an agreement date 5.11.2018, the Appellant sold to Beatrice Khabere Amana 0.1 hectares of the land comprised of in the same title leaving the Appellant with 0.1 hectares as the title was 0.4 hectares.
60. A review of the evidence cannot lead the conclusion that ½ and ¼ acre of land LR. No. Butso/Indangalasia/3352 was not available for sale.
61. In regard to the differences in the names, evidence was led that the Appellant did swear an affidavit and lodge an application in the Land's Registry for correction of the names and in which he confirmed his particulars in the national identity card as No. 39XXX922 and not 19XX431 as appeared in the title. In regard to the identity card appearing in the agreement of sale dated 1.12.2017, there was no conclusive evidence that the details were as given by the Appellant and it may as well be a typographical error on the part of the Advocate.
62. From the prosecution's evidence and the defence, it emerged that once the Appellant was informed about his settling the complainants on a totally different parcel of land from the one sold to them, he showed them another area but his son refused while the wife agreed. Therefore, there was an impediment to the transaction created by the Appellant's son.
63. Upon analysis of the evidence in totality, I find that the prosecution failed to prove to the required standard that at the time of the sale of the land to the complainants, the Appellant knew that he was purporting to sell to them land comprised in Parcel No. Butso/Indangalasia/3352 while intending to settle them from the outset on the neighboring Parcel No. Butso/Indangalasia/3353 and that he intended to deceive them into giving him money which they would not have otherwise given him had they known the true facts.
64. The prosecution having failed to prove knowledge by the Appellant that he was settling the complainants on a different parcel of land, one of the vital ingredients to prove false pretence is missing. In the case of Samson Maina Mukunga v Republic [2024] KEHC 5506(KLR) PJO Otieno J stated held as follows:-

“The three ingredients of the offence are cumulative and failure to prove just one negate the charge. For that reason and having found that the second element of obtaining by false pretence was not proved, it serves no meaningful purpose to delve on the third issue of whether there was the intention to defraud. It is enough that one element was never proved to the requisite standards.”
65. It is worth noting that although it was not part of the lower court record, that the two complainants did on February 2024, file civil suits in the Environment and Land Court being Kakamega CMELC No. E4O of 2024 and E38 of 2024 in which each one of them is seeking specific performance directing the Appellants to transfer the acreage of land bought to each respective buyer and to compensate them for the development on parcel No. Butso/Indangalasia/3353. It is also instructive that Beatrice informed the trial court that what she required was a refund of her money or a title deed; while Andrew said that he was seeking justice.



66. Ultimately, I hold the view that the dispute between the parties would have been best handled by the Land court in the first instance and in this, I am persuaded by the holding in *Joseph Wanyonyi Wafukho v Republic* [2014] EKLK where Gikonyo J held that:-

“ A cursory treatment of the above facts may create a feeling that there could be some criminal liability on the part of the Appellant for failing to deliver the land; after he had sold it and received the sum of Shs 252,000 which is not a small sum in the circumstances of this case. But such is just but a false feeling which, if not careful, might blur the mind of the court. However, courts of law are experienced at unravelling such assumed dilemmas by carefully considering the facts of the case and the law applicable. The facts of this case reveal that the suit land existed; had been surveyed and a boundary delineated. Also, although there was no formal document to show that the Appellant was the registered proprietor of the suit land, there was no doubt, [and that was not contested], that he owned or had proprietary interest in the suit land. The only problem is that family members did not support or approve of the sale. He was selling was real land, and not what I would call ‘air’. There was nothing false or untrue about the agreement for sale of the land or the land itself.”

67. Having considered the circumstances of this case, I am persuaded that the conviction was unsafe. It is hereby quashed and the sentence set aside. If the Appellant is in custody, he should be set free forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 10<sup>TH</sup> DAY OF JUNE 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for Mr. Munyendo for the Appellant

Ms. Chala for the Respondent

Court Assistant: Polycap

