



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Angwete & another (Criminal Appeal E101 of 2024)  
[2025] KEHC 7994 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7994 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E101 OF 2024**

**DR KAVEDZA, J**

**JUNE 9, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**FREDRIC SHIVACHI ANGWETE ..... 1<sup>ST</sup> RESPONDENT**

**PETER ANENGE DELUMANA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the original ruling delivered on 9th May 2024  
by Hon. Murage (PM) at Kibera Chief Magistrate's Court Case No.  
43+955 of 2020 Republic vs Fredric Shivachi and Peter Anenge Delumana)*

**JUDGMENT**

1. The Respondents were charged and acquitted by the Subordinate Court for the offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code*. The particulars were that on October 2019 at Ngong Road Area within Nairobi County, the respondents jointly defrauded and obtained Ksh.740,000/- from Obadiah Kazungu by falsely pretending that they were in a position to sell motor vehicle reg no. KCQ 487N Toyota fielder.
2. Aggrieved, the appellant filed an appeal challenging the acquittal. In the application, the appellant contended that they had an arguable case. They also averred that the court erred by closing the case suo moto and acquitting the respondents. They submitted that the decision was bad in law, illegal, and offends the ends of justice.
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. PW1, the complainant, Obadiah Kazungu, testified that on 11th October 2019, he received a WhatsApp advertisement for the sale of a motor vehicle. Subsequently, on 14th October 2019, he was introduced to one Fredrick Shivachi. They met at Amani Motors showroom, where he viewed the motor vehicle and was advised to have his mechanic conduct a road test.
5. The vehicle in question was a Toyota Fielder, registration number KCQ XXXX. On 17th October 2019, PW1 returned with his mechanic. Shivachi informed him he would not be present but directed him to Samuel Edebebe, who facilitated the road test. During the visit, Samuel produced a copy of the logbook, indicating Ismael Yassir Hassan as the registered owner.
6. Later that evening, PW1 spoke with one Peter Delumana, and they agreed on the purchase price of Kshs. 740,000/-. PW1 made an initial deposit of Kshs. 100,000/- via bank transfer to Fredrick Authman Motors. Following this, Delumana issued a sale agreement via WhatsApp. PW1 was then asked to settle the balance, which he paid through RTGS in the sum of Kshs. 640,000/- to the same beneficiary.
7. Thereafter, PW1 attended the showroom and waited for the transaction to be finalised. He observed Mr. Edebebe conversing with Delumana and questioned why the bank details and the parking location of the vehicle differed. He was informed that such was the standard procedure. At approximately 5:30 pm, the phones of both dealers became unreachable.
8. PW1 confirmed that he never took possession of the vehicle. The motor vehicle was later towed to the police station, and the individuals involved were charged. He later met the registered owner, Ismael Yassir Hassan, who confirmed that he had not received any payment. PW1 stated that he was neither refunded nor given the vehicle, which was subsequently released to the owner. During cross-examination by Peter Delumana, PW1 admitted that they never met in person during the transaction.
9. PW2, Brian Mutua, corroborated PW1's account. He accompanied PW1 to view the vehicle at Gash Motors along Ngong Road. He took the vehicle for a road test and found it in good condition. On 22nd October 2019, PW1 informed him that payment had been made.
10. PW2 went to the yard to collect the vehicle but was told to wait for payment clearance. Upon returning at 4:00 pm, he found the yard deserted and was informed that PW1 and an attendant named Edward had gone to the police station.
11. Following PW2's testimony, the prosecution sought to withdraw the case under Section 202 of the Criminal Procedure Code (CPC). The court found the evidence insufficient to place the accused persons on their defence and accordingly acquitted Peter Delumana under Section 210 of the CPC. The warrant of arrest against Fredrick Shivachi remained in force since he had failed to attend court.
12. The main issue for determination is whether a prima facie case was established to warrant the Respondent to be put in their defence in accordance with Section 211 of the CPC.
13. In Republic v Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows:

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.



14. In *Ronald Nyaga Kiura v Republic* [2018] eKLR wherein paragraph 22 is stated as follows:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person.”
15. In this case, the Respondents had been charged with the offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code*.
16. 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.”
17. In *Ekoiit v Republic (Criminal Appeal 60 of 2023)* [2024] KEHC 3835 (KLR) the court noted that:

“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.”
18. To sustain a conviction for the offence charged, the prosecution was required to establish the elements of false pretence, intent to defraud, and the obtaining of something capable of being stolen. However, at the close of the prosecution’s case, the evidence fell materially short.
19. First, although PW1 stated that he paid Kshs. 740,000/- via bank deposit and RTGS to an entity named Fredrick Authman Motors, no evidence was adduced to establish any direct link between those funds and the respondent, Peter Delumana. Under cross-examination, PW1 expressly confirmed that he never met Delumana in person during the transaction.
20. All communication between PW1 and the respondent was allegedly via WhatsApp, but no WhatsApp records were produced or authenticated in court. No evidence tied the respondent to the mobile number(s) or messages in question. This created a critical evidentiary gap and failed to establish that it was the respondent who induced PW1 to part with the money.
21. Secondly, PW1 alleged he received a sale agreement via WhatsApp. This document was neither produced nor authenticated. Similarly, a copy of the logbook was shown to PW1 by one Samuel Edebede and not the respondent. PW1 interacted with at least three individuals namely Shivachi, Samuel, and Peter. However, it was Shivachi and Samuel who physically dealt with the vehicle. There was no evidence that Delumana had custody, control, or ownership of the vehicle, or that he made any representations about its sale or delivery.
22. PW2, a mechanic, corroborated only the road test and the fact that PW1 made payment. He did not testify to any dealings or contact with the respondent.
23. Crucially, there was no evidence that Delumana had access to or knowledge of the funds transferred, nor that he benefited from them. The prosecution also failed to link the registered vehicle owner, Ismael Yassir Hassan, to any transaction with the respondent. There was no proof that the vehicle was available for sale through or by the respondent.



24. In line with *Ekoiit* (*supra*) and Section 313 of the *Penal Code*, the prosecution needed to prove that the respondent obtained money through a false representation of an existing or past fact, made with intent to defraud. No such representation was identified, nor was any fraudulent intent attributed to the respondent on the evidence led.
25. Accordingly, the trial court correctly applied Section 210 of the *Criminal Procedure Code*, which requires acquittal where, at the close of the prosecution's case, there is no evidence upon which a reasonable tribunal could convict. As held in *Republic v Abdi Ibrahim Owl* [2013] eKLR and *Ronald Nyaga Kiura v Republic* [2018] eKLR, a *prima facie* case must be sufficient to support a conviction if uncontroverted.
26. In this case, the prosecution's case was disjointed, lacked corroboration, and failed to establish any nexus between the respondent and the alleged fraudulent conduct. The trial court was therefore justified in finding that no *prima facie* case had been made out. The acquittal was not premature, but a proper application of the law to the evidence on record.
27. For the foregoing reasons, 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**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Mutuma for the Appellant

Respondents absent

Tonny Court Assistant

