



REPUBLIC OF KENYA



KENYA LAW
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**Director of Public Prosecutions v Joseph (Criminal Appeal
E053 of 2023) [2025] KEHC 10380 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E053 OF 2023
WA OKWANY, J
JULY 17, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT

AND

THOMAS NJERU JOSEPH RESPONDENT

*(Being an Appeal from the Judgment at the Chief Magistrate's Court
in Nyamira, Criminal Case No. E721 of 2022 delivered by Hon.
C.I. Agutu, Senior Resident Magistrate on 28th November 2023)*

JUDGMENT

1. The Respondent herein, Thomas Njeru Joseph, was charged with the offence of obtaining registration by false pretences contrary to Section 320 of the *Penal Code*. The particulars of the offence were that on 4th March 2022, at Kisii Town, with the intent to defraud, wilfully obtained registration of Motor Vehicle Registration No. KBP xxxC by falsely pretending that the Motor Vehicle was genuinely registered under him.
2. The Respondent also faced the second count of giving false information to a person employed in the Public Service contrary to Section 129 (a) of the *Penal Code*. The particulars of the charge were that on the 7th day of March 2022 at Sengera Police Station in Manga Sub-County within Nyamira County informed No. xxx P.C. John Tubei, a person employed in the Public Service as a police officer that he had bought a motor vehicle Registration No. KBP xxxC, make Probox, white in colour from one Paul Reuben at a price of Kshs. 260,000/=, information he knew or believed to be false, intending thereby to cause the said No. xxx P.C. John Tubei to repossess the said vehicle from Peter Mosigisi which ought not to have been done if the true state of facts respecting such information was given had been known to him.



3. The Respondent denied both charges and the case proceeded for hearing. The Appellant/Prosecution called four (4) witnesses. Four witnesses including the complainant Peter Mosigisi (PW1), the original seller Mokaya Apollo Reuben (PW2), the officer who allegedly received the false information No. xxx P.C. John Tubei (PW3), and the investigating officer No. xxx Cpl. Wesley Mutahi Martin (PW4). Their testimonies revealed that the vehicle had initially been sold by PW2 to both the Respondent and PW1 as joint buyers as the payments could be traced to both parties. The motor vehicle was however ultimately registered solely in the Respondent's name after he made further payments and acquired the log book.
4. The prosecution's case was built on the premise that the Respondent fraudulently obtained registration of Motor Vehicle Registration No. KBP xxxC and provided false information to the police officer, No. xxx P.C. John Tubei, with the intent of unlawfully repossessing the vehicle from one Peter Mosigisi.
5. On his part, the Respondent denied the allegations made by the prosecution and testified that he had contributed more money towards the purchase of the said vehicle and eventually settled the entire balance when his business relationship with PW1 deteriorated. He maintained that he acted within the bounds of the law and that the transfer of the vehicle to his name was done with the consent of the seller and upon making full payment.
6. Upon evaluating the evidence, the trial court acquitted the Respondent after finding that there was no formal motor vehicle sale agreement between the parties and that the prosecution had failed to prove the charges beyond reasonable doubt. Dissatisfied with the said verdict, the Appellant filed the present appeal wherein it was asserted that the trial magistrate failed to properly analyse the evidence and consider the essential ingredients of the offences charged.
7. As a first appellate court, it is my duty to re-evaluate the evidence afresh and reach my own independent conclusion while bearing in mind the fact that I did not have the benefit of observing the witnesses firsthand as they testified (see *Kiilu & Another v Republic* [2005] 1 KLR 174).
8. I have carefully considered the record of appeal and the submissions presented by the Appellant. I find that the main issue for determination is whether the trial court arrived at the correct verdict in acquitting the Respondent on both charges.
9. Section 320 of the [Penal Code](#) which provides as follows: -

320. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.
10. Section 312 of the [Penal Code](#) defines "false pretence" as follows: -

312. 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.
11. In the case of *R v Dent*, [1975] 2 All E.R. 806 Devlin, J. in explained what amounts to false pretence and held thus: -

"to constitute a false pretence the false statement must be of an existing fact,..... 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".



12. In the case of Hashim v Republic (Criminal Appeal E050 of 2021) [2023] KEHC 26652 (KLR) the court outlined the ingredients of the offence of obtaining registration by false pretences as follows: -

“...there must be a representation on matters of fact about the past or present; that representation must be false and it must have been made with the intent of defrauding someone of his property. It must have been acted upon to the disadvantage of the complainant...”

13. From the above cited cases and provisions it is clear that the the key element that the prosecution needed to prove was that the Respondent, with intent to defraud, obtained the registration by falsely pretending to be entitled to the motor vehicle in question. The evidence presented by the prosecution and particularly the evidence by PW2, indicated that the Respondent ultimately paid the full purchase price and was issued with the log book by the motor vehicle seller. I find that this piece of evidence negates any suggestion, by the prosecution, that the registration was obtained by false pretences.

14. My finding is that the motor vehicle purchase transaction, though informal and devoid of a clear written agreement, appeared to have evolved into a legitimate purchase once the Respondent paid the outstanding balance and received the necessary documents. It would appear that the Respondent acted in the manner that he did because of the friendship that he had with the complainant. It is my finding that the absence of proof of fraud or false representation at the time of registration weakened the prosecution’s case.

15. Turning to the second count of giving false information to a public officer, the prosecution was required to demonstrate that the Respondent knowingly gave false information to mislead the police into an act they would not otherwise have done. Section 129 of the *Penal Code* provides as follows: -

129. Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, the person employed in the public service –

- (a) to do or omit anything which the person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of the person employed in the public service to the injury or annoyance of any person, is guilty of a misdemeanour and is liable to imprisonment for three years.

16. PW3, No. xxx PC John Tubei who testified as follows: -

“On 7th March 2022, while at Sengera Police Station, Report Office, a reportee, Joseph Njeru came and reported that he had bought a motor vehicle KBP xxxC Probox white in colour from Paul Reubenamounting to Kshs. 260,000/=. He paid Kshs. 150,000/= instantly and agreed to pay the remaining balance immediately he starts using the motor vehicle. And in the same year, he met one Peter Mosigisi who introduced him to his company (supplying lines contracted by Kenya Power). He wanted to use his motor vehicle and on return to share proceeds with Peter Mosigisi after deducting expenses....He later reported that since that day, he left his vehicle to Peter Mosigisi to operate and use in his business. In April 2021, he requested him (Peter) to pay Kshs. 160,000/= for the time he had used the motor vehicle but instead, the accused (sic) told him “to go where he knows” and further told him he would not pay and had also retained the motor vehicle. He was now seeking Police assistance....”



17. From the above extract of the testimony of PW3, it is clear that the Respondent informed the police that he had purchased the vehicle and had ownership documents including a log book in his name. Considering the confirmation from PW2 that the Respondent completed payment and was issued the log book, I hold the view that there was no sufficient evidence to show that the Respondent intentionally misled the police. I find that his claim of motor vehicle ownership was not entirely without foundation and was arguably made in pursuit of a genuine dispute over ownership rather than as a calculated falsehood.
18. My further finding is that, in the circumstances of this case, the trial court was justified in finding that the prosecution did not establish criminal intent or fraudulent conduct to the standard required in criminal proceedings, which is proof beyond reasonable doubt. My take is that while the facts of this case appear to indicate a civil dispute over motor vehicle ownership and each persons' contributions to its purchase, they fall short of substantiating criminal culpability.
19. Having carefully reviewed the record, I find no basis to fault the trial court's findings. The evidence presented by the prosecution does not support a conviction on either count. Consequently, I find that the appeal lacks merit.

Disposition.

20. The Appeal is hereby dismissed. The judgment of the trial court delivered on 28th November 2023 acquitting the Respondent is upheld.
21. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 17TH DAY OF JULY 2025.

W. A. OKWANY

JUDGE

