



REPUBLIC OF KENYA



KENYA LAW
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**Mayieka v Republic (Criminal Appeal E055 of 2024)
[2025] KEHC 9502 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E055 OF 2024**

JN ONYIEGO, J

JULY 1, 2025

BETWEEN

**NOAH MWANIKI MAYIEKA ALIAS GEORGE MUIRURI
MBUGUA APPELLANT**

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence of Hon. J. Omwange (PM) in
Garissa CM's Court Criminal Case No. E1184 of 2021 delivered on 06.12.2024)*

JUDGMENT

1. The appellant was charged with two counts. Count I, he was charged with Obtaining money by false pretences contrary to section 313 of the *Penal Code*. The particulars of the offence were that on diverse dates between 27.08.2016 and 29.08.2016 in Garissa Township within Garissa County, with intent to defraud he obtained from Mohamed Gorre Bulale the sum of Kes. 700,000/- by falsely pretending that he would sell and transfer motor vehicle registration number KCC 417A, Toyota Fielder white in colour.
2. Count II, he was charged with conspiracy to defraud contrary to section 317 of the *Penal Code*. The particulars were that on diverse dates between 24.08.2016 and 22.12.2016 within the Republic of Kenya with others not before the court, they conspired with intent to defraud UAP Insurance a sum of Kes. 910,000 by falsely pretending that his motor vehicle registration number KCC 417A Toyota Fielder, white in colour was stolen through a robbery with violence incidence in Kisumu and further claimed for compensation with the said UAP Insurance after he had sold the said motor vehicle to Mohamed Gorre Bulale.
3. The appellant pleaded not guilty to the charge and the case proceeded to full trial with the prosecution calling a total of five (5) witnesses.



4. PW1, Mohamed Gorre Bulale, the complainant testified that on 27.08.2016, while in his probox registration no. KCD 430U, he saw a white Toyota fielder with a placard showing that the same was for sale. That he telephoned the number thereon (0701258098). That the recipient of the said number confirmed to him that indeed the motor vehicle was on sale and that he quoted Kes. 850,000 as the selling price. That he consequently sold his MV at Kes. 670,000/- and then proceeded to start negotiations with the seller of the Fielder vehicle, the appellant herein.
5. He went further to state that on 28.08.2016, he met the appellant and the selling price of the suit motor vehicle was negotiated at Kes. 700,000/-. On the following day, he conducted a search on the said vehicle and the results showed that the owner of the vehicle was Noah Mwaniki Mayieka.
6. It was his evidence that in the company of his friends, Hassan Sheikh Mohamed and Mohamed Dekow Mathai, he met the appellant at Nomad Hotel and so, they compared the details of the motor vehicle on the log book vis a vis the search and found that they tallied.
7. According to him, the appellant introduced himself as George Wilson Muiruri and showed him a transfer agreement signed by Noah Mwaniki Mayieka who had allegedly sold to him the said motor vehicle. That the sale agreement between George Muiruri and him was signed on 29.08.2016 and that George had already filled his details and so, he also filled his details before signing the agreement.
8. It was his testimony that he paid the appellant Kes. 700,000/- in cash for the exchange of the vehicle and the log book. On 05.09.2016, he visited the NTSA offices to effect the transfer of the suit vehicle in vain as he was informed that the log book that he possessed was a scanned copy. He was thus told to avail an original log book instead. That upon calling the appellant, the call did not go through and so, he reported the same to the DCI offices at Garissa.
9. On 03.03.2021, he was stopped by two police officers who informed him that they wanted the suit vehicle and so, the same was detained at the police station pending investigations. That prior to the foregoing, on 28.08.2021, together with the seller, they went on a road test at Bulla Iftin where they visited his house where his wife served them tea. He stated that an ID parade was conducted whereupon he identified the appellant as the person who sold him the car.
10. On cross examination, he said that they met on 28.08.2016, 29.08.2016 and 17.10.2021 before the court. That the seller showed him a sale agreement between him and Noah Mwaniki and that the transfer had already been signed. According to him, George and Noah are the same person as the appellant was the person who gave him the transfer agreement. On re-exam, he stated that it is the appellant who sold him the suit vehicle and that he told him that his name was George Muiruri but the log book contained the name Noah.
11. Upon being recalled for further cross examination, PW1 stated that the sale agreement did not capture the registration number of the motor vehicle in question in as much as the sale agreement between Noah and George showed the registration. That the sale agreement that he filled his details on was already signed. Further, that the seller's signature was similar to the signature in the sale agreement between him and George and sale agreement between Noah and George. He denied being shown the photo of the appellant during the ID parade process. He further stated that the photograph in the ID by the name of George Muiruri was similar to the appellant's face.
12. PW2, Fartun Omar, wife to PW1 testified that on 28.08.2016, PW1 together with two other men arrived at their home and she served them tea. That the second man, was the appellant herein while the other man was unknown to her. It was her evidence that when PW1 returned, she asked him what exactly was happening. That PW1 told her that the appellant wanted to sell him a motor vehicle. That



- after some time, PW1 told her to go record a statement with the police in relation to the suit vehicle. She also stated that she participated in an Identification Parade wherein she identified the appellant.
13. PW3, Hassan Sheikh Mohamed, a businessman testified that on 28.08.2016, he received a call from PW1 informing him that that he had seen a vehicle that he desired to buy hence sought for his advice. That he met PW1 with two men at Soko Mugdi where they decided to go for a road test after which, they visited Nomad area. While at Nomad, PW1 was given a logbook to go conduct a search and so, they met the following day too. On 29.08.2016, they conducted a search which details tallied with the ones on the log book and therefore, PW1 called one of the two men who turned out to be the appellant. They met at Nomad where PW1 paid the appellant Kes. 700,000/- and further, that the appellant gave him Kes. 3,000/- urging that he was of great help to them.
 14. He further stated that the appellant gave PW1 an original log book, two keys and two sale agreements, That the agreement was partly filled and only PW1 was required to fill his details. It was his testimony that the other sale agreement was between Noah Mwaniki Mayieka and George Wilson Muiruri and that the same was unsigned. Later on, PW1 informed him that the log book was rejected as the same was not original.
 15. PW4, David Cheruwo Kiboi testified that he worked with UAP and Old Mutual as an internal investigator. That he was informed by the General Manager about the case herein as he was to coordinate in providing documents that had been requested by the police in the process of investigations. He stated that the suit vehicle had been reported stolen and the claim had been processed and settled as the money was paid to the insured. According to him, the vehicle, registration no. KCC 417A Toyota Fielder, white in colour had been reported stolen on 24.08.2016 within Kisumu and the incident reported at Kondele Police Station.
 16. PW5, No. 99501 IP George Karanja, the investigating officer testified that he received information about the suit vehicle to be operating in Garissa without proper documents. That on 04.03.2021, as he was heading to work, he spotted the said vehicle along Lamu road and called Cpl. Hassan Omar with whom together, they followed the said vehicle to Iftiin area where they intercepted it. He stated that they found PW1 in the car who informed them how he had acquired the vehicle. He reiterated PW1's evidence.
 17. Further, it was his evidence that PW1 reported via OB No.28 at the Garissa Police Station. That prior to the sale of the said MV, the same had been reported stolen and that the insurance had already paid the claim to the insured. He stated that he managed to trace the appellant at Mathare in Nairobi and summoned him at Akila Police station where he recorded his statement. He told the court that he took a specimen of the appellant's hand writing and signature and forwarded the same to the handwriting examiner for comparison which results later came out.
 18. Additionally, the appellant was arrested and an ID parade conducted which turned out to be positive. It was his evidence that Noah Mwaniki was compensated by the insurance company and at the same time, presented himself to the complainant as George Muiruri thereby defrauding him of his money. That after being compensated, the appellant transferred the suit motor vehicle to the UAP insurance.
 19. On cross examination, he stated that he heavily relied on the sale agreements to prefer the charges herein. Further, that the ID number of the appellant was not reflected on the log book. He further denied the allegation by the appellant that his photo was taken prior to the ID parade being conducted. He termed the claim as an afterthought as the same was not raised prior to the parade being conducted. He also stated that he investigated the name of the subscriber of the phone number from the call log he was given by PW1 but found that the same had already been assigned a new subscriber.



20. In regards to the signatures on the sale agreements, he stated that he could not tell whether the same were similar as he was not an expert on the same. Additionally, he stated that the signatures from the sellers didn't look similar. In the same breadth, it was his evidence that the registration of the motor vehicle being sold was not included in the sale agreement drawn and that generally, the sale agreement had a lot of inconsistencies. That the foregoing notwithstanding, he chose to believe the complainant's narrative. He also stated that there was a possibility that the sale agreement was never signed by the appellant.
21. After the close of the prosecution's case, the trial court ruled that a prima facie case had been established against the appellant and he was thus placed on his defence.
22. DW1, Noah Mwaniki Mayieka in his defence testified that he is a developmental worker with an NGO. It was his evidence that when he was arrested, he was released to Yussuf and his two colleagues from Garissa Regional DCI office. That with him was his driver, Michael Otundu. He stated that he was later released but before that, Yussuf took his photo and that in as much as his driver contested, the same was in vain. At that point, he was informed that he was needed in Garissa to answer to charges regarding a motor vehicle.
23. He stated that upon arriving Garissa, he was kept in a cell and later, PC Karanja informed him that he would participate in an ID parade. That in as much as CIP Oganga and PC Karanja conducted the parade, the same was unfair as his photo had previously been taken allegedly to help PW1 and PW2 in identifying him.
24. According to him, PW1 and PW2 took less than a minute to identify him yet the incident herein allegedly had occurred five years ago. He stated that noting that he has a scar on the left side of the eye, no one noticed the same thus leaving little to believe in the concluded ID parade. He reiterated that he lost his vehicle through an armed robbery on 24.08.2016 and that he reported the same to the police. According to him, PW1 and PW2 were total strangers to him. He challenged the prosecution's case by stating that when he was charged, only the two sale agreements were supplied to him as the other documents were supplied by the insurance company. He further stated that the results from the handwriting expert showed that he was not the author of the agreements.
25. He denied receiving any money and that the alleged number that the complainant used in reaching him was never investigated to determine the rightful owner. Generally, he denied committing the offence herein.
26. DW2, Michael Ouko Otundo testified that on 15.10.2021, he was with the appellant who also doubles as his boss. He stated that the appellant had called him to accompany him to Central Police station. That while there, an officer who introduced himself as Yussuf took a photo of the appellant.
27. Judgment was subsequently delivered wherein the appellant was convicted in both counts and sentenced to serve 12 months' imprisonment each and that the sentences to run consecutively.
28. Dissatisfied with the judgment of the trial court, the appellant lodged this appeal premised on the grounds that:
 - a. The trial magistrate erred in law and in fact in convicting the appellant against the weight of evidence.
 - b. The trial magistrate erred in law and in fact in convicting the appellant despite the gaps that existed in the respondent's case.



- c. The trial magistrate erred in law and in fact in convicting the appellant yet the respondent's case was riddled with inconsistencies.
- d. The trial magistrate erred in law and in fact in convicting the appellant on defective charges.
29. The court directed that the appeal be canvassed by way of written submissions.
30. In his submissions dated 20.03.2025, the appellant faulted the decision of the trial court on the allegations that it failed to give any findings on the ingredients of the charge of the offence of obtaining money by false pretense as set out in the case of *Gerald Ndobo Mujunga vs R HC Criminal Appeal No. 213 of 2011* (Nyeri) inter alia; a) the thing obtained must be capable of being stolen and; b) there must be false pretense with intent to defraud.
31. On the element of false pretense with intent to defraud, it was urged that no evidence was shown that the appellant knowingly made a false pretence nor was it demonstrated that the appellant had knowledge of the purported sale. That the evidence of the handwriting expert exonerated the appellant as it was clear that he did not author any of the alleged sale agreements. On the element of representation, it was submitted that the identity of the person PW1 purchased the suit vehicle from remained unclear. In the same breadth, it was contended that failure to include the vehicle's registration number in the sale agreement was highly suspicious and detrimental to the respondent's case.
32. On the element that the pretence made by the appellant must be false, it was submitted that the respondent failed to prove the same as the sale agreement produced before the court showed lots of discrepancies. That the failure to include the registration number of the vehicle was fatal to the respondent's case. It was argued that it remained unknown whether indeed, the alleged sale ever occurred.
33. On the element of intent to defraud, it was submitted that no evidence was adduced to demonstrate that the complainant paid the alleged amount of Kes. 700,000/- to the appellant. That in as much as the complainant stated that he had kept the money in the house, the same was highly unlikely more so for a farmer in the Northern part of the country.
34. On the question that the appellant obtained something capable of being stolen, it was contended that in as much as the suit motor vehicle was capable of being stolen, the legitimacy of the sale agreement was questionable. On the last element, it was urged that there was no evidence adduced to the fact that the appellant induced the complainant to transfer the ownership of the suit motor vehicle to him. Reliance was placed on the case of *Njeru vs Republic* [2016] eKLR where the Court of Appeal emphasised that the element of inducement must be proven beyond any reasonable doubt.
35. It was urged that the charge sheet was fabricated as the same brought about the impression that the appellant was equally known as George Muiruri. That in the light of the evidence of PW5 and PW3, it was clear that there existed a person by the name of George Muiruri. As such, the charge sheet as drawn was misleading and no conviction ought to be derived from the same.
36. In regards to the ID parade, it was argued that the same was encumbered with lots of irregularities in that the appellant was photographed prior to the exercise being done. That it was unlikely that the accused did not identify the appellant in the parade which was done five years later yet PW2 stated that she did not take a minute to identify the appellant noting that previously, it was alleged that PW2 allegedly met the appellant for a period between 15 – 20 minutes. That the same raised concern noting that no one ever saw the scar on the appellant's face and yet the same was visible.
37. In further urging that the appellant's defence was not considered, this court was urged to allow the appeal as prayed. That this being the case, the trial magistrate who convicted and thereafter sentenced



the appellant had no jurisdiction to do so. Additionally, that the trial court erred when it failed to indicate whether the sentences should run consecutively or concurrently.

38. The respondent filed its submissions dated 1st April 2025. Learned counsel submitted that prosecution did establish the salient ingredients of the offence of obtaining money by false pretences. It was counsel's submission that the appellant had no vehicle capable of being sold having reported loss of the same mv through a robbery with violence incident.
39. On the question of knowledge, it was contended that the appellant was aware that he was selling what he had reported stolen and compensated hence had no capacity to sell. To buttress his position, counsel referred the court to the case of *John Njogu v Republic (2016) KEHC 75069KLR*.
40. On the question of identity, counsel submitted that the evidence of pw1, pw2, and pw3 was quite corroborative. That they identified the appellant during the ID parade. Counsel submitted that the correctness of the sale agreement was not material nor a defence. To support that position, counsel referred to the case of *John Njogu v Republic (supra)* where the court held that although there was no formal sale agreement in the sale of the motor vehicle by the conduct of the appellant receiving money, it was sufficient proof that the appellant had sold the motor vehicle.
41. On sentence, counsel submitted that the court properly exercised its discretion and awarded a lenient sentence.
42. The court has considered the grounds of appeal, the proceedings of the lower court and submissions by both the appellant and the respondent. This court thus appreciates that the appeal is solely on whether or not the prosecution proved its case beyond reasonable doubt?
43. In seeking to determine the issue above, the court appreciates its mandate and obligation on a first appeal to demand a complete and in-depth re-appraisal and re-examination of the entire record at trial, with a view to arriving at its own independent conclusion, of course, while giving room for the fact that the trial court did enjoy the benefit of seeing and hearing the witnesses testify. See *Okeno vs Republic (1972) EA 32*.
44. The appellant was charged with obtaining money by false pretences contrary to Section 313 of the [Penal Code](#) which provides 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 misdemeanour and is liable to imprisonment for three years.
45. It therefore follows that for the prosecution to achieve a conviction on a charge of obtaining by false pretence under section 313 of the [Penal Code](#), it has to prove, beyond reasonable doubt, that; the accused committed an act or acts leading to obtaining something capable of being stolen, by advancing to the victim a false pretence with the ultimate goal to defraud, the victim. In the case of [Gerald Ndoho Munjuga V R HC Criminal Appeal No. 213 of 2011](#) (Nyeri), Justice Mativo, quoted with approval from the High Court of Botswana in *Lesholo & Another V The State* in which the court held that:
 - i. To prove the offence of obtaining by false pretence, the accused must by a false pretence, with intent 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.



- ii. 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 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]
 - iii. 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.”
46. Similar position was held in the case of *Wafukho v Republic* (Criminal Appeal 200 of 2012) [2014] KEHC 7538 (KLR) (20 January 2014) (Judgment) Reported
47. Did the Appellant obtain the money by false pretences or with intention to defraud the purchaser? Section 312 of the [Penal Code](#) defines false pretence 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.”
48. From the evidence recorded at trial, it is not disputed that the complainant’s claim emanates from the fact that the appellant falsely pretended to sell him the suit vehicle with the intention to defraud him and that he not only lost the vehicle but also his money. The investigating officer further stated that prior, the suit motor vehicle had been reported stolen and that the insurance had already paid the claim to the insured, the appellant herein.
49. The appellant on the hand alleged that the suit motor vehicle previously belonged to him and that he lost the same through a robbery incident. In short, he denied being involved in the offence herein. He heavily relied on the respondent’s evidence which according to him did not support the charges herein.
50. He argued that the sale agreements had material deficiencies to construe a valid agreement. Case in point, he pointed out that his ID number was not reflected on the log book and further, that the investigating officer did not name the subscriber of the phone number from the call log as supplied by PW1. Additionally, that the signatures of the sellers didn’t look similar.
51. Having perused the evidence or record, there are issues that stand out clearly and which are not disputed. Firstly, that the subject motor vehicle at one point was registered and owned by the appellant. That the motor vehicle was sold to the complainant. That the motor had been reported by the appellant as having been stolen and the UAP insurance compensated him.
52. The key questions seeking for answers are; who sold the motor vehicle to the complainant; did the seller have legal capacity to sell; did the seller receive money from the complainant. If the seller had no capacity, then, he would have obtained the money which is property through false pretences hence defrauded both complainants.
53. From pw1’ testimony, it was the appellant who sold him the motor vehicle. This was corroborated by pw2 his wife and pw3 his witness who signed the sale agreement. Pw2 stated that on 28-08-2016, her husband pw1 and pw3 went to her home with the appellant. That she served them with tea. From the testimony of pw1, pw2 and pw3, they identified the appellant in the ID parade.
54. The appellant on the other hand denied having sold the motor vehicle in question. He instead claimed that he was robbed of the motor vehicle by unknown persons and he that he did not sell the same.



- He denied knowledge of the complainant. He insisted that he did not sign the alleged sale agreement between himself and the alleged George Wilson Muiruri Mbugua nor the complainant. He however admitted having received compensation from UAP insurance as compensation for loss of his motor vehicle.
55. Indeed, the document examiner did not find the appellant's signature in any of the sale agreements. However, the complainant stated that he was given the two sale agreements by the appellant and they were pre-filled and signed. He stated that he had no reason to doubt the appellant. Of interest is the allegation by pw1 and pw3 that when they wanted to pay the appellant through the bank, he refused claiming that he was in a hurry hence preferring cash.
 56. In the absence of a binding written agreement, as it is in this case, can the court convict based on direct evidence alone? Unlike land matters, transactions involving sale of motor vehicles need not mandatorily be in writing. This position was aptly espoused in the case of John Njogu Ngugi (supra). The complainant and pw2 and pw3 were categorical on the person who sold the mv. They picked him during the id parade.
 57. Pw1 explained that he did not witness the appellant sign the sale agreement as he had already pre signed it. Why would they pick on the appellant as the seller? Their evidence is well corroborated. Obviously, there was a hidden motive behind pre-signing the agreement. It was meant to conceal the identity of the true seller and owner of the motor vehicle. The complaint was definitely duped. I have no reason to believe that the parade was a sham. I have no reason to convince me that the three witnesses' identity of the appellant was mistaken. The claim that photographs of the appellant were shown to the witnesses before participating in the ID parade was an afterthought as the same was not raised during the exercise.
 58. I am convinced that the appellant was positively identified by pw1,2, and 3 hence the trial court was proper in holding that the motor vehicle was sold by the appellant. I have no reason to doubt the prosecution's case. The mere fact that the sale agreements which were manipulated were not signed by the appellant, does not exonerate him from liability. The whole exercise was properly executed. I do not think the complainant had any reason to frame up the appellant. The appellant was fully aware that the first sale purportedly signed by him selling the same mv to George Muiruri was intended to convince the complainant that the alleged George (appellant) had not transferred the same mv into his name.
 59. From the circumstances of this case, the trial court properly found that the appellant did obtain money from pw1 in the pretext that he had a mv capable being sold and indeed he falsely sold and obtained money through deceit or fraud from pw1. Equally, having sold the mv, he falsely obtained compensation from UAP insurance in pretence that he had been robbed of the mv. These are cheap tricks which are common in the Kenyan society of fraudsters. He definitely obtained compensation through fraud (count two).
 60. On the question of lack of jurisdiction by the trial court, it was not elaborated to what extent. The court was properly seized of jurisdiction. Regarding the claim that the court did not state whether the sentence was to run consecutively or concurrently, the record is clear at page 55 of the proceedings that sentence was to run consecutively.
 61. Concerning sentence, the same is at the discretion of the court and in my view it not excessive and that the court properly exercised its discretion. See O v Republic (criminal appeal E021 OF 2023) (2024)KEHC7460 (KLR)(13 June 2024)(judgment).
 62. To that extent, it is my finding that the appeal herein is unmerited hence dismissed. The lower court's conviction and sentence are hereby upheld.



63. Accordingly, the accused's bond is hereby cancelled and the accused to be taken to prison to continue serving his sentence from where he had left.

ROA 14 Days

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 1ST DAY OF JULY 2025

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J. N. ONYIEGO

JUDGE

