



**Rateng & 2 others v Republic (Criminal Appeal E015 of 2022)  
[2025] KEHC 10534 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10534 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E015 OF 2022**

**DK KEMEL, J**

**JULY 18, 2025**

**BETWEEN**

**MUSANDO RATENG ..... 1<sup>ST</sup> APPELLANT**

**RAYMOND OMONDI OCHIEL ..... 2<sup>ND</sup> APPELLANT**

**CHRISPIN JUMA OTIENO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal originating from the conviction and sentence by Hon. C.N. Sindani (PM) in Ukwala Court Criminal Case No. 190 of 2019 delivered on 31/2/2022 and 8/4/2022 respectively)*

**JUDGMENT**

1. The appeal herein arises from the conviction and sentence of Hon. C.N. Sindani (PM) at Ukwala Principal Magistrate's Court's Criminal Case No. 190 of 2019 dated 11/4/2022 wherein the Appellants were convicted for the offence of obtaining money by false pretence, contrary to Section 313 of the [Penal Code](#) and each ordered to serve under a probation sentence for three years.
2. Aggrieved by the said conviction and sentence, the Appellants filed a petition of appeal dated 20/4/2022 wherein they raised the following grounds of appeal namely:
  - i. That the learned Principal Magistrate erred in law and fact in convicting the Appellants for an offence that was not proved according to the law in that false pretence and the purported sums of money allegedly obtained was not ascertained and proved beyond reasonable doubt.
  - ii. That the learned Principal Magistrate erred in law and fact by not properly evaluating the weight of the Appellants' evidence adduced by the Appellants in relation to the offence in relation to the offence they were charged with.



- iii. That the learned Principal Magistrate misconstrued the prosecution's evidence and reason wherefore he made erroneous finding that the Appellants had committed. The offence of obtaining money by false pretence.
- iv. That the learned Principal Magistrate erred in law and fact by conclusively finding that the evidence by PW5 was sufficient proof of the Appellants having committed the offence charged with.
- v. that the learned Principal Magistrate erred in law and fact and failed to consider the Appellants submissions at the sentencing hearing as a result of the Appellant were subjected to a steep and harsh sentence despite the fact that the Appellants were first offenders.

Whereof the Appellants prayed that the appeal be allowed and that the conviction be quashed and the sentence set aside and that the Appellants be set free.

3. This being a first appeal, this court is enjoined to re-evaluate the evidence tendered before the trial court and subject it to an Independent analysis so as to arrive at its own conclusion as to whether or not to uphold the decision of the trial court. this court will also have to take into account the fact that it did not see or hear the witnesses testify. See *Okeno Vs R* [1972] EA 32.
4. The record of the lower court indicates that the prosecution had laid a raft of six charges against six suspects and that at the close of the prosecution's case the trial court acquitted some of the suspects under Section 210 of the *Criminal Procedure Code* while it placed the three Appellants herein and another on their defence and eventually acquitted one of the suspects under Section 215 of the *Criminal Procedure Code* and convicted the three (3) Appellants herein. This has precipitated the present appeal. As the Appellants had been acquitted of all the counts except that of obtaining money by false pretence contrary to Section 313 of the *Penal Code*, this court will proceed to concentrate on the evidence relating to the said charge as presented by the Respondent's witnesses and the Appellants herein.
5. The three Appellants herein and another who was subsequently acquitted were charged with an offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code*. The particulars were that on the 19<sup>th</sup> day of November 2018 at Ugunja township in Ugunja Sub-County within Siaya County with intent to defraud jointly obtained from Kenya National Land Commission a sum of Ksh721,779/= by falsely pretending to be the genuine owners of land parcel Siaya/Umalla/1287 and therefore entitled to compensation for land acquired under the Lower Nzoia Irrigation Development Project.
6. Grace Anyango Oloo (PW1) testified that she was the Assistant Chief of Umalla sub – location Central Ugenya and that the 2<sup>nd</sup> Appellant went to her office seeking for an introductory letter in order to commence succession over parcel Siaya/Umalla/1287 owned by John and Robert. That the 2<sup>nd</sup> Appellant is a step-son to John Muchura. That she did not write the letter as she wanted documents as evidence of lodging a succession cause. That she later disowned a letter purportedly written by her dated 10/10/2018.  
  
On cross examination, she stated inter alia; that the Appellants had been using the land in question; that none of the Appellants came to her office for vetting exercise regarding the land compensation; that she did not write an introductory letter to the Appellants.
7. Nancy Achieng (PW2) testified that she worked at the Civil Registration Office in Siaya. That on 4/4/2018, some visitors came to her office seeking for a death certificate for their client and that they gave them the requisite forms to fill. That the same fellows came again and claimed that they were



pursuing matters to do with one John Muchura who was alleged to have died in Ugunja due to Tuberculosis.

On cross examination, she stated inter alia; that the persons who had come for documents are not the ones charged in court; that the Appellants never visited her offices; that the advocate one Oscar Juma was standing in for the 1<sup>st</sup> Appellant; that none of the Appellants appeared before her; that the information came from the Assistant Chief.

8. Thomas Collins Muchura (PW3) testified that he was alerted about a Kenya Gazette Notice which indicated that his father's land was in the name of other persons namely the Appellants herein. That they commenced investigations as to how the three Appellants came to be registered as owners of land parcel Siaya/Umalla/1287. That they lodged the complaint with the CID Siaya which led to the arrest of the Appellants and others.
9. John Oscar Juma (PW4) testified that his law firm was appointed as a consultant in a World Bank Project for Lower Nzoia area and that he was aware of parcel No. Siay Umalla/1287 and that a search was conducted which established the owners as John Muchura and Robert Nungo but also established that John Muchura had died and therefore he sought to get the beneficiaries of his estate. That the first Appellant herein came forward as Administrator and that the process of filing succession cause was commenced. That he later learned that there were other succession caused that had been filed regarding the estate of John Muchura and that there were two certificates of death over the same. That he advised the Objectors to proceed and lodge objections for revocation of the grant.

On cross examination he stated inter alia; that the first Appellant is a client he dealt with but that it was his assistant who processed his claims regarding the compensation; that they visited all concerned offices they could commence the process; that the Appellants never came to his office and that he made the application for the grant himself and swore the affidavits based on the information he was given and further prepared the documents and commissioned them; that he did his due diligence; that the 1<sup>st</sup> Appellant did not own the land; that he does not know the 2<sup>nd</sup> Appellant; that when the grant was issued no objection had been filed on record; that after gazettelement there was no complaint filed with the National Land Commission; that the letter was written by the chief.

10. Alfred Muloki Mulure (PW5) stated that he worked with Juma & Co. Advocates as a legal clerk. That he was familiar with the issue of land parcel Siaya/Umalla/1287. That the persons who presented themselves as owners of the land comprised of 1<sup>st</sup> Appellant as the Administrator, 3<sup>rd</sup> Appellant, 4<sup>th</sup> Appellant one Marcella Akoth. They were approved by the chief and thereafter they proceeded to file succession cause in court. That the issue of two types of death certificates came to their knowledge after the grant had been issued.

On cross examination, he stated inter alia; that the people he was assisting did not appear at the office of the Registrar of Births and Deaths; that he confirms collecting the certificate of death and that there was no objection; that they were not processing succession where there was a dispute; that there was no objection over the said land at the time.

11. Mirriam Sarah Mukopa testified that she was at the office of the Civil Registration as the secretary when visitors came led by Oscar Juma. That the visitors were given the requisite forms to fill and that she assisted them to fill the same. That the forms were later processed and a death certificate issued. That she does not know the accused persons as they never visited the office.
12. No. 57107 CPL Richard Ongere (PW7) testified that he investigated the matter and recorded statements of witnesses and later arrested the Appellants herein together with others. That he established that the registered owner of land parcel No. Siaya/Umalla/1287 had died in Nairobi yet the



Appellants obtained a death certificate indicating that the said person died in Ugunja. That he charged them for giving false information. He produced two death certificates in respect of the deceased John Muchura.

On cross examination, he stated inter alia; that he interviewed six people in total; that the documents which he came across and prepared by the advocate indicated that the Appellants were not present when the same were being processed by the advocate; that the lawyer Oscar Juma was not charged; that he never visited Kenyatta National Hospital or Siaya to confirm where the deceased (John Muchura) had died; that he never took signature samples from the Appellants for verification; that he did not know that the suit land Siaya/Umalla/1287 was ancestral land; that the search certificate on the land showed that it had two owners but that he did not interview the surviving co-owner; that the Appellants received over Kshs700,000/=.

13. The prosecution closed its case at that juncture. Upon the Appellants being put on their defence, they tendered sworn testimonies.
14. Musando Rateng (DW1) testified that he knows the owner of Siaya/Umalla/1287 as Owino, Okello, father to Redeyo Owiso who are sons of Owiso and that Owiso is his father. That the land is ancestral where all family members reside and do farming. That he does not know how the land came into the name of Robert yet his parents were the ones tilling it as it was ancestral parcels of land. That the deceased John Muchura and Robert Nungo were his cousins and that he was not at home during the adjudication process wherein the said John Muchura and Robert Nungo were registered to hold the land in trust for the rest of family members. He went on to add that the registration of John Muchura and Robert Nungo was not to imply that they were the only owners of the land since he too was cultivating a portion thereof. He denied the charges against him.
15. DW2 was Robert Evans Nungo told the court that he is a farmer and retired driver with the Ministry of Agriculture as per his introduction. He told the court that he had been given land by his brother one John Muchura who had died in 1996. That they were three registered owners being James Rateng, John Muchura and Robert Nungo. He gave a detailed analogy on how the parcel were shared among the families as per the tree lines. That they had agreed to come back for parcels belonging to the family. He clearly stated that he was the registered owners of LR Siaya/Umalla/1287 with John Muchura, that he never sought any Kenya Gazette in regard to his land and it is only Thomas Muchura who discovered the notices. He further testified that he is a farmer and retired driver with the Ministry of Agriculture and Livestock, that he retired in 1978, that he has a land that he was given by his elder brother one John Muchura and who died in 1996 when he had bought the land for him. That John Muchura did not change the names in the register, that there were three people; James Rateng, John Muchura and Robert Nungo. That the land was LR 1287. That they shared the land in 1972 and that he had an interest in the LR No. 1287. That he had another land, the one he was given by his brother and the one by his mother. That the farms belong to their grandmother Mr. Owiso who had sons. That Robert Alfred Nungo is his father, that he is one of the sons of Owiso, that he recalled they met as family in 1996 in Nairobi at Timboroa hotel. That there was John Muchura, James Rateng, Fredrick Otieno and others and that they were discussing on how to share the land. That they discussed about all the parcels. That the elders put aside a place for grazing cattle one adjuscent to 1247. That he has the minutes of our deliberations and same produced as MFI D1. That they agreed 194 was the homestead. LR 837 for his father Robert Alfred Nungo, the 3<sup>rd</sup> farm 545 to go to younger brother and that they agreed to meet at home and deliberate while seeing the farms and further agreed to get consent of having the land subdivided. They agreed to involve surveyor and a letter was written seeking to know the cost of the process, each of them was to give their identity copy and photo as per their resolutions which included parcel numbers. That Alfred who is his father was not in the meeting as he was deceased by then and that he



died in 1945. That Lawrence Rateng, Robert Nungo, John Muchura are brothers. Isaac Muchura is a son to John Muchura, and that Paul Musando Rateng was his cousin while Raymond is his son. That he was not notified of the Government taking the land parcel for irrigation purposes as he realized later although there is usually a chief's baraza every Friday and that the villagers are usually alerted by either chief or village elders. That some of the land owners attended the baraza and some had been called to attend but he was not invited. That he is not aware if his chief had a copy as he is not able to access any Kenya Gazette and that he is not aware of LR 1287 being on Kenya gazette. He is usually at his home, and that it is his eldest son who has a title deed for the farm that he was give by son. That it was Muchura who had the documents to their land and that him and his elder brother are registered and that in case he dies then he is left as the sole owner. That he had seen a copy of the search certificate – South/Ugenya/Umalla/1287 and that it shows two persons as the owners. That they were sharing among three persons. It shows John Muchura and Robert Nungo and that it was done before the 2<sup>nd</sup> meeting – DMFI 2. They met in Nairobi and minutes thereof 19/12/2009 were for the 2<sup>nd</sup> meeting being marking of the parcels MFI D3. That he knew the 4<sup>th</sup> accused namely Onyango Oloo and who was a nephew and a son of Aloo Aggrey. That DW2 was not to share land with his father. He was to sit in the meeting. 4<sup>th</sup> accused was Paul Ochieng the son of Stephen and the son to Owino owiso. That he was his grand child in the clan. The elders had shared the farms to their father while they were still alive. That the farms were not being tilled as it was for grazing.

On cross examination, Robert Nungo stated that he was illiterate, and that he didn't know how to read and type minutes and that he had his document that he trusted. That he did not know who had been keeping the minutes and that anybody can forge signature. That he never received any money in regard to his land and that he did not know who was paid. That he was never informed and that it never passed through him.

On re-examination, he indicated that the contents of his document and that of Mr. Ogado were similar. That he was in the meeting but they never signed and that the minutes were taken/recorded by Stephen and that the 2<sup>nd</sup> meeting minutes were recorded by Lawrence Rateng.

16. James Rateng Nungo (DW3) testified that he is a peasant farmer and that he knows the Appellants. That they are from same family, same grandfather. That the 1<sup>st</sup> Appellant is his cousin while Raymond is the 2<sup>nd</sup> Appellant and 3<sup>rd</sup> accused are his nephews while the 4<sup>th</sup> accused is a son to his cousin. That they share a grandfather being Owiso Omollo. That Owiso had three wives Rigari, Ademba and Hasenyi. That the 1<sup>st</sup> accused comes from Rigare house same as himself (James Rateng) (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused come from Rigare house), 4<sup>th</sup> accused from Ademba house.

That he has land which he farms on. That when his grandfather died, he left behind three sons and three pieces of land. Sons names are John Muchura, Robert Evans Nungo and James Rateng Nungo. Parcels were

Ugenya/Umala/536

Ugenya/Umala/545

Ugenya/Umala/594

Ugenya/Umala/837

That the said parcels were distributed. That the 1<sup>st</sup> meeting was held in 1996 in Nairobi. That the meeting was convened by John Muchura who was the father to the complainant Tom Muchura and it was on 19/1/1996. That members present included Muchura, James Rateng, Robert Evans Nungo, Stephen Ochieng, Churchil Muchura, that minutes were recorded showing how the parcels will be distributed. That they agreed on engaging the land surveyor and that they were to give their copies of



identity cards and passport photos. Robert was tasked with ascertaining costs. They as well had another meeting at home where Collins was called to see how the 5 parcels can be subdivided. Tom Muchura, Robrt Mungo and Issac Muchura are the persons who were called/invited. George was not present, out of the county. The meeting took place in Majengo village, their fathers' home. They discussed on South/Ugenya/Umala 536, 545,586,594 and 837. It was on 19/12/2009. Members present were Paul Musando, Simon Ochieng, Dancun Aloo, Robert Evans Nungo, Churchil Muchura, Issac Muchura and James Rateng Nungo. That after the meeting, they went around to see the boundaries of the five parcels of land mentioned above. That LR 1287 is known to him and it never belonged to his father. It belonged to the three families – Owiso Mudoi, owino Owiso and Nund Owiso. That each family had a parcel of which he knew when the case began. By the time the accused were arraigned in court, it is when he realized that the land was registered by two brothers John Muchura and Robert Nungo and that he had seen a copy of the search.

That he knew the three families since his youth days who owned the said land. By the time the three families were using the land, his father had lost his first wife and he had no interest in LR 1287 as it is an ancestral land.

17. Raymond Omondi Ochieng (DW4) (2<sup>nd</sup> Appellant) testified that he is aware that he faces the charge of obtaining money by false pretence. That he knows parcel No. Siaya/Umala/1287. That the said land is theirs. That it belongs to Raymond, Musando Rateng, Chrspine Juma and Duncan Onyango. That they acquired it from their grandfather Owinyo. That John Muchura and Robert are their uncles. John's father is a follower of their grandfather. That his grandfather is Paul Owiso. His brother is Alfred Robert Nungo. That he is aware that names appear at the records of land as owners. The names were erroneously put there. That he discovered when the father died. That he discovered that 1287 and 594 were erroneously registered in John Muchura's names and that he spoke to John's elder son – Tom about it in 2008 and that he took legal action vide High Court Succession Cause No. 741/2012 and that he had the proceedings. He also produced a search as DEXH1. That he followed up the issue with Tom. That on 19/12/2009 Tom was called by James Rateng, Odhaimbo, Isaac Odhiambo, Charles Onyango. Paul Musando was there. That the discussion was on how to subdivide the parcels as per the minutes presented. That he was aware of other meetings 1996 Timboroa and chaired by John Muchura who died in 2000. That he is the father to Tom Muchura. That they identified what belonged to them and 1287 was not in the list. That it is not true that they obtained money on this property. That they never received any money related to his land. That there was nobody who gave them the exact figure of money we obtained. That there were no bank statements availed. That he told the police that the land was his. That the police told them that they were thieves. That the police then charged them. That the first accused was his uncle who was claiming an interest in the land, it is block and has not been subdivided. That he knows the 3<sup>rd</sup> accused who is his cousin. That he knows the 4<sup>th</sup> accused and who is a son to his cousin and that they as well have an interest in the said land. That when they wanted to have it subdivided, they found it registered in the names of other persons. That they spoke to Tom but he refused. That it was in 2012 and that they never received over kshs700,000/=. That he know that the complainant is Tom Muchura who said that Raymond Omondi took money from Ministry of Lands and that there was no statement of account to that effect. That there is no witnesses from the irrigation board. That is no evidence to confirm exactly what he obtained. That he prays the court to dismiss the charges. That they have always used the land they have never received complaints about it.
18. Duncan Onyango Aloo – 3<sup>rd</sup> accused testified that he knows that he is facing charges of obtaining money through false pretence over LR No. Siaya/Umala/1287. That it is an ancestral land. That he has been farming on the said. That the complainant claims an interest on it. That they haven't discussed the issue with John and Robert. That there was no evidence produced before the court to confirm obtaining. That there was no actual amount proved. That there were no witnesses from Lands Office



- or Irrigation Board. That the land is theirs and that he has an interest in it. That he has never received any money in regard to the land in question. That he cannot ascertain over kshs 700,000/= that was allegedly by the Investigating officer.
19. Chrispine Juma Otieno (DW6) (4<sup>th</sup> Accused/3rd Appellant) testified that he knows the charges facing him. That he has an interest in the land in issue. that the land belonged to their grandfather Owino Owiso. That he never heard any witness giving the exact amount they obtained. That Tom Muchura is the one who said it was over Kshs700,000/=. That he never received any monies. That he knows the other accused persons. That accused 1(1<sup>st</sup> Appellant) is his grandfather, accused 2(2<sup>ND</sup> Appellant) is his uncle, accused 3 is his paternal uncle and that all of them have an interest in the said land. That in the first meeting the issue of the land in question was not discussed. But in the 2<sup>nd</sup> meeting, he was telling Tom that his father didn't have a share and that it was for the three families. That there was no objection at all by then. That he confirmed his father had no interest on it. That the true brothers could have registered themselves illegally. It is not true to say the parcel is not being used. That the one using it was the mother of the 4<sup>th</sup> accused. That they have planted potatoes, cassava and maize. That the 3<sup>rd</sup> accused has maize on the said land, that the 2<sup>nd</sup> accused leases it to other people. That he is aware of the lower Nzoia Irrigation Scheme LR 1287 was among the ones being acquired. That those concerned used to tell us when they came from Barazas. That the information was being conveyed by assistant chief. That he had no interest on the parcel and that he did not attend. That he was aware of the allegations of the accused having obtained letters oaf administration illegally to obtain money. He was not aware if they received any money in regard to this parcel of land. That he followed some of the earlier proceedings. That at first instance, they were six (6) accused persons. That the other two were ladies. That he learned that the investing officer testified in court. that he never produced any evidence of the accused receiving money. That they never produced any statement from the account of the accused. Robert Nungo did not claim the compensation because he knew he held the land as trustee for the three families. That he was aware of the complainant Tom Muchura.
  20. The trial court after analyzing the case came to conclusion that the Respondent had proved its case against the three (3) Appellants herein who were subsequently convicted for the offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code*. The trial court also found that the Respondent did not prove the charge against the 3<sup>rd</sup> accused and who was subsequently acquitted of the charge under Section 215 of the *Criminal Procedure Code*.
  21. The appeal was canvassed by way of written submissions. However, it is only counsel for the Appellants who complied.
  22. Learned counsels agreed to highlight the submissions filed by the Appellants. It was submitted by Mr. Ogado for the Appellants that the Appellants had initially been charged with six counts out of which the trial court dismissed five counts at the prima facie stage and sustained only one count (count vi) which related to obtaining money by false pretence contrary to Section 313 of the *Penal Code*. It was submitted by counsel that the prosecution failed to prove that the Appellants misrepresented falsely to the Irrigation Board that they were the owners of LR No. Siaya Umalla1287. Further, it was submitted that no evidence was adduced to show that the Appellants actually received the alleged Kshs700,000/= . Further, it was submitted that the trial court failed to consider the evidence of the Appellants and their witnesses. It was finally submitted that the Respondent did not meet the threshold of proof and therefore the impugned judgment must be set aside and the Appellants set free. Learned counsel in response to the Respondent's counsels submissions that the prayer sought is time barred and that the Appellants should have sought for review of sentence, submitted that even though the Appellants have served their sentences, they seek to have the conviction quashed so that their innocence is restored.



23. Mr. Soita, learned counsel for the Respondent submitted that the record of the lower court shows that the Appellants have already served their sentences to completion and that the prayer herein is now time barred and that the Appellants should have sought for review of sentence instead.
24. I have considered the record of the lower court and the submissions filed. It is not in dispute that the Respondent had initially preferred six counts against the Appellants herein and three others and that the trial court later dismissed five of the counts and sustained only one count of obtaining money by false pretence contrary to Section 313 of the *Penal Code*. It is also not in dispute that even though the Appellants have served their sentences, they have a right to pursue an appeal in order to clear their innocence or otherwise. I find the issue for determination is whether the Respondent's case was proved against the Appellants beyond reasonable doubts regarding the charge of obtaining money by false pretence contrary to Section 313 of the *Penal Code*.
25. Section 313 of the *Penal Code* 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.”
- Further, Section 313 of the *Penal Code* defines false pretence in the following terms:
- “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.”
26. As the charge is on Section 313 of the *Penal Code*, the Respondent was under obligation to prove certain essential ingredients inter alia; that the Appellants made representation by words, writing or conduct to the lower River Nzoia Irrigation Project and thereafter to the National Land Commission; that the representation was in relation to either past or present facts; that the representation to the National Land Commission was false; that the Appellants made the representation knowing it to be false or believed the representation was not true; that the Appellants eventually received the amounts complained of in the sum of Kshs721,779.00/= from the National Lands Commission.
27. After analyzing the entirety of the evidence presented by the Respondent and the Appellants herein, certain issues stood out namely that the land subject of the dispute (Siaya/Umalla/1287) was ancestral land with each family member staking a claim thereon, that the persons initially registered namely John Muchura and Robert Nungo are said to have held the same in trust for themselves and the rest of the family members. That no evidence was presented to the court to show or prove that the Appellants herein had received the alleged compensation of Kshs 721,779.00/= from the National Land Commission. That it was critical and important for the Respondent to ensure that it proved its case against the Appellants beyond any reasonable doubt. It is instructive that the Respondent did not call any witness from the National Land Commission so as to prove that the alleged sums of money was actually paid out to the Appellants. Further, it is trite law that the burden of proof lies squarely upon the prosecution in all criminal cases to discharge and that in the event of any doubt created then, the benefit of such doubt must be resolved in favour of an accused in any event. Again, the Respondent did not produce any copies of cheques showing that the 1<sup>st</sup> Appellant was paid the alleged money and further no Mpesa statement was availed to prove the money payment. The Respondent also failed to provide any evidence to the effect that the 1<sup>st</sup> Appellant upon receipt of the alleged money made payment to the rest of the Appellants.



28. From the foregoing analysis, it is evident that the Respondent did not manage to discharge its burden of proof against the Appellants. The evidence as a whole created some doubt as to whether or not the Appellants had committed the alleged offence. The trial court therefore went into error when it convicted the Appellant yet there were glaring gaps in the Respondent's case and that there was some doubt regarding the Appellants involvement in the alleged crime. The trial court ought to have given the Appellants the benefit of doubt and to acquit them of the charge. Hence, the finding on conviction was in error and must be interfered with.
29. In the result, it is my finding that the Appellants' appeal has merit. The same is allowed. The conviction by the trial court dated 31/2/2022 is hereby quashed and the sentence dated 8/4/2022 is hereby set aside. The Appellants are ordered to be set at liberty forthwith unless otherwise lawfully held.

**DATED AND DELIVERED AT SIAYA THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

N/A Musando Rateng.....1<sup>st</sup> Appellant.

N/A Raymond Omondi Ochiel.....2<sup>nd</sup> Appellant.

N/A Chrispin Juma Otieno.....3<sup>rd</sup> Appellant.

Ogado.....for Appellants.

M/s Kerubo.....for Respondent.

Okumu.....Court Assistant.

