



REPUBLIC OF KENYA



KENYA LAW
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**Ngumbi v Republic (Criminal Appeal E061 of 2021)
[2024] KEHC 275 (KLR) (12 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E061 OF 2021
GMA DULU, J
JANUARY 12, 2024**

BETWEEN

DAVID MULWA NGUMBI APPELLANT

AND

REPUBLIC RESPONDENT

*(From conviction and sentence in Criminal Case No. 387 of 2018 at
Kilungu delivered on 28th April 2021 by Hon. E. M. Muiru (SPM))*

JUDGMENT

1. The appellant was tried and convicted of two counts of obtaining money by false pretences contrary to Section 313 of the *Penal Code*.
2. The particulars of Count I were that on diverse dates between March 25, 2015 and August 3, 2015 at Aimi Ma Kilungu farm in Mukaa Sub County within Makueni County with others not before court, with intent to defraud obtained from Julius Kiamba Kituma a total of Kshs. 3,415,000/= pretending that he was in a position to sell him Aimi Ma Kilungu agricultural Plot No. 574 measuring 10 acres a fact he knew to be false.
3. The particulars of Count II on the other hand were that within the same months and place obtained from Julius Kiamba Kituma a total of Kshs. 150,000/= pretending that he was in a position to sell to him Aimi Ma Kilungu Commercial Plot No. 265 a fact he knew to be false.
4. He denied both charges and after a full trial, he was convicted of both counts and sentenced to 2 ½ years imprisonment on each of the two counts, to run consecutively.
5. He has now come to this court on appeal challenging both conviction and sentence. The appeal was canvassed through written submissions, and I have perused and considered the submissions filed by the appellant and the submissions filed by the Director of Public Prosecution.



6. This is a first appeal, and I am reminded of my duty to evaluate all the evidence on record afresh and come to my own independent conclusions and inferences.
7. In proving their case, the prosecution called five (5) witnesses. On his part, the appellant tendered sworn defence testimony and did not call additional witnesses.
8. Though the appellant claims on appeal that he was not provided with prosecution witness statements, that was not the position. Infact he was at one point represented by counsel. I dismiss that ground.
9. From the totality of the evidence on record, the appellant did present himself to the complainants as capable of selling the alleged plots and did receive the sums of money alleged. Indeed, he was arrested in Nairobi, but for similar other offences. He cannot thus claim that he could not have committed the offences while in custody, as the offences herein were committed before his arrest.
10. I thus find that the prosecution proved the two offences beyond reasonable doubt. I will uphold the convictions.
11. The sentence was also lawful. I will thus also uphold the sentence.
12. Consequently, I dismiss the appeal and uphold both the conviction and sentence of the trial court. Right of appeal explained.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JANUARY 2024 AT VOI VIRTUALLY.

GEORGE DULU

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JUDGE

In the presence of:-

Ms. Nusura – Court Assistant

Appellant

Ms. Omolo for DPP

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

