

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION NO. E150 OF 2025

PAUL KAMWETI MWANGI.....
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

RULING

1. This is a Ruling over an application dated 10.9.2025 and filed by the Applicant seeking to release the motor vehicle registration number KDC 673Y.
2. The motor vehicle is imputed in crime as the Applicant was charged in Count I with cheating contrary to Section 315 of the Penal Code. The particulars of the offence were that the Applicant on 4.3.2025 by fraudulent tricks induced Christopher Macharia Gakingo to enter into a motor vehicle co-ownership agreement by convincing him that the said lorry registration number KDC 673Y makes a profit of Ksh. 18,000/= per day, a fact he knew to be false.

3. In Count II, he was charged with obtaining by false pretenses contrary to Section 313 of the Penal Code with particulars that on 11.3.2025 with intention to defraud, he obtained Ksh. 500,000/= from Christopher Macharia Mwangi by falsely pretending that he would co-own lorry registration number KDC 673Y.
4. There was also Count III on lorry registration number KDC 673Y, with particulars that on diverse dates between February 2025 and June 2025, with intent to defraud, obtained from Christopher Macharia Gakingo the sum of Ksh. 218,899/= by falsely pretending that he would co-own lorry registration number KDC 673Y.
5. The Applicant applied that this court releases the subject motor vehicle as the trial court erred in detaining the motor vehicle which ought not to have been detained. The motor vehicle is said to be his only source of income.
6. The Respondent conceded to the application.

Analysis

7. The powers of the High court in revision are contained in Section 362 through to 366 of the Criminal Procedure Code. Section 362 of the Act provides as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose

of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

8. What the High Court can do under its revision jurisdiction is stated under Section 364 of the Criminal Procedure Code, which states as follows:

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may -

(a) In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;

(b) In the case of any other order than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he had had an opportunity of being heard either personally or through an advocate in his own defence. Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a Subordinate Court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

9. The revisionary power of this court also serves the supervisory role and the court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate court. Article 165(6), the relevant provision, is as doth:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

10. The Applicant contended that the detained motor vehicle was his only source of livelihood. This is not the only question that is before the court. The motor vehicle is not the one alleged to have caused the crime. It is not necessary in the determination of the offences of cheating, obtaining by false pretence. It deals with money and not the acquisition of the vehicle. The same is not part of the evidence that need to be brought to court. Even if the same is needed, the photos are enough.

11. The court notes that import of the charges that the Applicant is facing relate to money and not the motor vehicle.

The same ought not to have been detained. In the circumstances, the said vehicle is hereby ordered released. It is important that the Respondent rightly conceded the application. In the case of **Elisha Nyagaya Onduro v Republic** [2016] KEHC 1973 (KLR), the court noted as follows:

12. In the instant case the Appellant faced an offence of obtaining money by false pretences Contrary to Section 313 of the Penal Code. The issues of consideration in this appeal are as follows:-

- a) What are the essential elements of an offence of obtaining money by false pretences?
- b) Whether a charge of obtaining money by false pretences to have been proved beyond any reasonable doubt?
- c) Whether the matter before trial Court was contractual or whether alternative remedy available was specific performance or referred of the alleged consideration and whether criminal jurisdiction could have been involved where the issues are clearly Civil in nature?

13. The essential elements of the offence of obtaining through false pretences are as follows:-

- i. Obtaining something capable of being stolen.
- ii. Obtaining the money through a false pretence.
- iii. Obtaining the money with intention to defraud.

14. 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 presentence.”

15. The operative word under the said Section is “representation” which is applicable in the following circumstances:-

- i. A representation by words, writing or conduct.
- ii. A representation is either past or present.
- iii. A representation that is false.
- iv. A representation made knowing it to be false or believed not to be true.

16. From the above it is therefore clear that the offence of obtaining by false pretences does not relate to future events. This section unfortunately proclaims that the representation should be of either past or present fact but not future fact. The case law points to that position. In the case of **Oware V. Republic** (1984) KLR 2001 the Court of Appeal sitting at Nairobi addressed itself thus:-

A representation as to a future event cannot support a charge of obtaining money by false pretences. In the above mentioned the case of R. V. Dent (1955) 2. Q.B. PP 594/5 was referred to and in which case Devlin, J:-

A long course of authorities in criminal cases has laid down that 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.”

17. It follows that the vehicle is not useful in determining any of the charges before court. The application is therefore merited. There was no reason to retain the said vehicle.

18. Further there was no basis for ordering a preservation order. The vehicle is not a necessary exhibit by any stretch of imagination. In the circumstances, the application is allowed.

Determination

19. In the upshot, I make the following orders: -

- a) The application dated 10.9.2025 is merited and is allowed.
- b) The decision and Order of the trial court declining to release motor vehicle Registration Number KDC 673Y is set aside.
- c) Motor vehicle Registration Number KDC 673Y is hereby released forthwith to the Applicant.
- d) The Officer Commanding Karatina Police Station is directed to comply with and implement this Order.

e) The file is closed.

DELIVERED, DATED and SIGNED at NYERI on this 14th day of October, 2025. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of:-

Ms. Musili for the Applicant

Mr. Kimani for the State/Respondent

Applicant - present

Court Assistant - Michael