



**Khan v Republic (Criminal Appeal E020 of 2025)
[2025] KEHC 15150 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E020 OF 2025
DR KAVEDZA, J
OCTOBER 28, 2025**

BETWEEN

NADEEM SHAKOOR KHAN APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 13th Day of February 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate's Court Criminal Offences Case No. E835 of 2021 Republic vs Nadeem Shakoore Mbiti)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of Obtaining Money by False Pretences Contrary to Section 313 of the Penal Code. The particulars were that on the diverse dated between 20th Day of April and 7th Day of August 2019 at Gatts Motors in Kilimani area within Nairobi with intent to defraud, he obtained Kshs. 1,100,000 from Robin Mutati Mbiti by falsely pretending he was in a position to import and sell Motor Vehicles, Toyota Fielder a fact he knew was not true. He was sentenced to pay a fine of Kshs.500,000 in default to serve one (1) year imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



4. Robin Mutati Mbiti PW1 testified that he intended to purchase a motor vehicle and was introduced to the appellant by a friend. They met at T-Mall and later at Panari Hotel, where they agreed that the vehicle, valued at KShs. 1.1 million, would be paid for in instalments. PW1 was to pay a deposit of KShs. 800,000 and thereafter monthly instalments of KShs. 50,000. He paid KShs. 10,000 via M-Pesa on 24/04/2019, followed by KShs. 280,000 and KShs. 400,000, completing the deposit. On 6/08/2019, at the appellant's request, PW1 paid the balance of KShs. 300,000 allegedly for clearance at Mombasa Port. The total payment of KShs. 1.1 million was made to the appellant and his company account.
5. The vehicle, however, was never delivered. The appellant thereafter avoided PW1, leading him to report the matter at Kilimani Police Station in January 2020. PW1 produced the Sale Agreement signed by both parties and confirmed that payments were made to the account provided by the appellant. He denied knowledge of any third-party agent or company involved in the importation process.
6. PW2, PC Munene, the investigating officer, testified that he received PW1's complaint on 12/01/2022. He obtained a court order to investigate the bank account of Gatti Motors at Co-operative Bank and confirmed receipt of the complainant's funds. He stated that the appellant ignored several police summons and was arrested on 30/04/2021. PW2 found no evidence that any vehicle had been imported or delivered.
7. In his defence, the appellant (DW1) claimed he was an employee and director of a company with four directors and that the transaction was between PW1 and the company, not him personally. He attributed the failure to deliver the vehicle to disruptions caused by COVID-19 and stated that the complainant had failed to return for further negotiations. He denied receiving fraudulent payments and maintained that PW1 dealt directly with the company. Under cross-examination, however, he admitted he had been the one in direct contact with PW1 and that he signed the Sale Agreement on behalf of the company. He also conceded that the matter remained unresolved four years later and that no refund had been issued.
8. DW2, another company officer, confirmed signing the Sale Agreement but claimed that PW1 breached its terms. He admitted, however, that he did not verify whether PW1 had completed payment when he signed.
9. This Court has carefully re-evaluated the facts of the case and the rival submissions advanced by both parties on appeal. Section 313 of the Penal Code stipulates that:

“ 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.”
10. To establish the offence, the prosecution must prove three key ingredients: first, that the accused obtained something capable of being stolen; second, that such obtaining was through a false pretence; and third, that the false pretence was made with intent to defraud.
11. In this case, the subject matter was money amounting to KShs. 1,100,000, paid by PW1 to the appellant and his company, Gatts Motors. Money is property capable of being stolen within the meaning of the Penal Code. The prosecution adduced evidence through PW1 and PW2 showing that the sums were deposited into the company's Co-operative Bank account and KShs. 10,000 transferred to the appellant's personal M-Pesa account. The first element was therefore satisfied.
12. As to the second element, the appellant represented to PW1 that he would import a Toyota Fielder motor vehicle upon payment of the agreed sum. The evidence revealed that the appellant received the



full amount but failed to deliver the vehicle, despite several promises. PW1 testified that the appellant became evasive and could not be reached thereafter. This conduct demonstrates that the representation was false and made with knowledge of its falsity. The subsequent failure to refund the money further supports the inference of fraudulent intent.

13. The defence that the delay was caused by COVID-19 disruptions was properly rejected by the trial court as an afterthought. The appellant neither produced import documents nor evidence of an existing shipment. His claim that he was merely an employee was contradicted by his own admission during cross-examination that he was a director of Gatts Motors and personally executed the sale agreement.
14. The trial court correctly found that PW1's testimony was consistent and credible, while the appellant's defence amounted to a mere denial unsupported by evidence. The prosecution, through documentary and oral evidence, sufficiently demonstrated that the appellant knowingly obtained the complainant's money by false pretences.
15. I therefore find that all the ingredients of the offence under section 313 of the Penal Code were proved beyond reasonable doubt. The conviction was safe and properly founded on the evidence adduced. The conviction of the trial court was proper and is affirmed.
16. Upon conviction, the appellant was sentenced to pay a fine of Kshs. 500,000 in default to serve 1-year imprisonment. During sentencing, the trial court considered the appellant's mitigation and that he was a first offender. The sentence imposed is also lawful and I have no reason to interfere.
17. In the premises, I see no reason to interfere. The upshot of this is that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGMENT DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF OCTOBER 2025.

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D. KAVEDZA

JUDGE

In the presence of:

Mr. Ondieki for the Appellant

Mr. Mutuma for the Respondent

Ms. Karimi Court Assistant.

