



**Republic v Kiuna & another (Criminal Appeal E021 of 2024)
[2025] KEHC 16922 (KLR) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E021 OF 2024
DR KAVEDZA, J
NOVEMBER 20, 2025**

BETWEEN

REPUBLIC APPELLANT

AND

BONIFACE NDUNGU KIUNA 1ST RESPONDENT

GEORGE WACHIRA KANYONI 2ND RESPONDENT

(Being an appeal against the acquittal of the trial court delivered on 18th April 2024 by Hon. C. Mwaniki (P.M) in Kibera Chief Magistrate's Court Criminal Case No. 595 of 2016 Republic vs Boniface Ndungu Kiuna alias Kanyoni & George Wachira Kanyoni)

JUDGMENT

1. The two respondents were jointly charged with two counts of offences. Count I, the offence of conspiracy to defraud contrary to section 317 of the Penal Code and Count II, the offence of obtaining money by false pretences contrary to section 313 of the Penal Code. They pleaded not guilty on both counts and after a full trial were acquitted.
2. Aggrieved, the filed the present appeal challenging their acquittal. The grounds advanced by the appellant are that the trial magistrate erred by failing to appreciate the totality of the prosecution's evidence and reached a wrong conclusion of acquittal on the charges preferred. That the trial court erred in failing to consider the ingredients of the charge and arrived at a wrong conclusion. The appellant urged the court to overturn the acquittal and convict the respondents accordingly.
3. As this is the Appellant's first appeal, the role of this appellate court of first instance is well settled. It was held in the case of *Okeno vs Republic* [1972] EA 32 and further in the Court of Appeal case of *Mark Oruri Mose vs R* [2013] eKLR that this court is duty-bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyse it and come to its independent conclusion on the matter



but always bearing in mind that the trial court had the advantage of observing the demeanour of the witnesses and hearing them give evidence and give allowance for that.

4. The prosecution's case was as follows: Edward Ndung'u Mburu (PW1) and his brother Daniel Kamau Mburu (PW2) testified that it was Daniel who first learnt that there was a plot for sale at Kawangware. He met the 1st respondent, Boniface Maina Kariuki, who told him that his brother was selling the land and took him to view it. PW2 informed PW1 about the parcel and introduced him to the 1st respondent. Both went to inspect the property, and PW1 expressed interest in purchasing it.
5. The 1st respondent later introduced them to the 2nd respondent, George Wachira Kanyoni, who claimed to be the registered owner. A meeting was held on 16th October 2015 between the respondents and the two brothers. During the meeting, the purchase price was negotiated and agreed at Kshs. 6,000,000.
6. The 2nd respondent produced a copy of a title deed in his name and a certificate of official search confirming ownership. PW1 instructed PW2 to verify the ownership, and a search conducted at the Lands Registry confirmed that the 2nd respondent was indicated as proprietor of Dagoretti/Riruta/5809. Satisfied with this, PW1 retained an advocate to handle the transaction.
7. Joseph Njoroge Mbugua (PW6), the advocate, testified that he prepared the sale agreement after being furnished with a title deed in the 2nd respondent's name dated 16th August 2012, and a search certificate dated 17th August 2012. He also drew an acknowledgement of receipt of brokerage fees between the 2nd respondent on one hand, and the 1st respondent and Daniel (PW2) on the other. All the documents were duly executed. The agreement required a deposit of 10% of the purchase price and the balance within three months.
8. PW1 stated that he paid the deposit and later visited the property. He saw a contact number displayed for rent collection and called the number. The agent informed him that rent was being collected by Peter Kamau and not George Kanyoni. When PW1 confronted the 2nd respondent, he explained that Peter Kamau had earlier tried to buy the land but failed to complete payment, and was allowed to collect rent until his deposit was recovered. PW1 accepted this explanation and proceeded to obtain Land Control Board consent. He also paid brokerage fees to PW2 and the 1st respondent.
9. PW1 took a loan to raise the balance and on 15th January 2016 deposited Kshs. 4,500,000 into the 2nd respondent's account at the Co-operative Bank. Evans Irungu (PW4), a bank officer, confirmed that the 2nd respondent's account at the Aga Khan Walk branch was credited with that amount from Edward Ndung'u Mburu. The following day, Kshs. 4.49 million was withdrawn. The relevant bank statement was produced in evidence.
10. On 19th January 2016, PW1 and his brother discovered that the 2nd respondent was not the lawful owner of the property. Upon verification, they learnt that the genuine owners were the family of one Peter Nyoike Kirahi (PW3).
11. PW3 testified that he was the proprietor of Dagoretti/Riruta/1162, which he subdivided in 2009 into five portions, including Dagoretti/Riruta/5809, which he gave to his wife Grace Wanjiru Nyoike. A title deed was issued in her name on 6th May 2009. Upon her death on 30th May 2013, the land devolved to their sons after a succession process. A copy of the death certificate and gazette notice was produced. He also produced a certificate of search dated 27th September 2021 showing the parcel registered in the names of his sons. He denied ever transferring the property to the 2nd respondent or to any third party.
12. Phillip Makini Javiogo (PW5), a Land Registrar, confirmed that he signed a certificate of search dated 27th October 2015 for parcel Dagoretti/Riruta/5809, which indicated George Wachira Kanyoni as owner and he had been registered as the owner on 30th July 2015.



13. The case was investigated by Senior Sergeant Silas Kubal (PW7). He received the complaint on 21st January 2016 and recorded statements from the complainant and witnesses. He obtained copies of the title deed and search certificate given to PW1 and arrested the 1st respondent at Westlands. He wrote to the Dagoretti Land Control Board seeking minutes of the meeting that allegedly granted consent but did not receive a reply. Before concluding the investigation, he was transferred and handed over the file to another officer.
14. In his sworn defence, the 1st respondent Boniface Maina Kariuki, testified that he met Peter Kamau Munene in October 2015, who informed him of the property for sale. He viewed it and later introduced PW2 to Peter Kamau. PW2 later said that his brother was interested, and a meeting was arranged between them and the 2nd respondent. The sale price was agreed at Kshs. 6,000,000. After the transaction, he received Kshs. 250,000 as brokerage commission. He denied knowledge of any fraud or that the documents were false.
15. The 2nd respondent, George Wachira Kanyoni, testified that he had been gifted the parcel by his former employer, Grace Wanjiru Nyoike, in 2012 and had it transferred to his name in 2015. He said he later decided to sell the land and engaged his friend Peter Kamau to look for a buyer. Peter introduced the complainant to him. The complainant conducted a search and confirmed ownership. They agreed to use one advocate and executed a sale agreement. He received the full purchase price and travelled abroad in early 2016. Upon return in 2017, he learnt that he was being sought by police and presented himself. He denied committing any offence and maintained that the sale was genuine.
16. After a full trial, the respondents were acquitted on both counts.
17. The appeal was canvassed by way of written submissions and there is no need to rehash them.
18. In count I, the respondents, were charged with the offence of conspiracy to defraud contrary to section 317 of the Penal Code, which provides that:

“ Any person who conspires with another to defraud any person, or to affect the market price of anything publicly sold, is guilty of a misdemeanour and is liable to imprisonment for three years.”
19. To sustain a conviction under this provision, the prosecution was required to prove beyond reasonable doubt that:
 - (a) there existed an agreement or common design between the respondents;
 - (b) the agreement was made with intent to defraud; and
 - (c) there was an overt act done in furtherance of that fraudulent purpose.
20. The prosecution alleged that the respondents jointly conspired to defraud the complainant of Kshs. 6,000,000 by falsely pretending that they were capable of selling to him the parcel of land known as Dagoretti/Riruta/5809. To establish the offence of conspiracy under section 317 of the Penal Code, the prosecution was required to prove the existence of a common design and a concerted intention to defraud.
21. From the evidence, the 1st respondent acted solely as a broker. He was introduced to the property by one Peter Kamau Munene and later connected the complainant to the 2nd respondent, who claimed to be the owner. His participation ceased once the parties met and agreed on the sale terms. He received Kshs. 250,000 as brokerage fees after the transaction. There was no proof of prior arrangement or communication between him and the 2nd respondent to mislead or defraud the complainant.



22. The 2nd respondent, on his part, presented documents that appeared genuine, including a title deed and an official search showing him as the registered owner. While the joint conduct of introducing the parties, negotiating terms, and executing the sale agreement may raise suspicion, these are acts ordinarily associated with legitimate land transactions.
23. In the absence of proof of a meeting of minds or shared criminal intent the prosecution failed to establish the elements of conspiracy to defraud beyond reasonable doubt. The acquittal of both respondents on Count I was therefore proper and justified.
24. In count II, the respondents, were charged with the offence of obtaining money by false pretences contrary to section 313 of the Penal Code, which provides:
- “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.”
25. To sustain a conviction, the prosecution was required to prove beyond reasonable doubt that:
- (a) a false pretence was made;
 - (b) money was obtained by means of that false pretence; and
 - (c) the accused acted with intent to defraud.
26. Perhaps the most explicit exposition of the ingredients of the offence of obtaining by false pretences is to be found in the decision rendered by the Nigerian Supreme Court on Friday April 2006 in the case of Dr. Edwin U. Onwudiwe vs Federal Republic of Nigeria SC 41/2003 where the court stated as follows:-
- “In order to succeed in a charge of obtaining by false pretences, the prosecution must prove:-
- that there is a pretence;
 - that the pretence emanated from the accused person;
 - that it was false;
 - that the accused person knew of its falsity or did not believe in its truth;
 - that there was an intention to defraud;
 - that the thing is capable of being stolen;
 - that the accused person induced the owner to transfer his whole interest in the property.”
- The offence could be committed by oral communication, or in writing, or even by conduct of the accused person. However, an honest believe in the truth of the statement on the part of the accused which later turns out to be false, cannot found a conviction on false pretence. The above adequately presents the law as in the Penal Code.”
27. The central issue is whether the 2nd respondent knowingly made a false representation that he was the lawful proprietor of Dagoretti/Riruta/5809, thereby inducing PW1 to part with Kshs. 6,000,000. The evidence shows that he presented a title deed and a search certificate bearing his name as proprietor. The Land Registrar (PW5) confirmed the existence of a search certificate showing the 2nd respondent as registered owner.



28. However, the evidence of PW3, the husband of the deceased registered owner, Grace Wanjiru Nyoike, was decisive. He testified that Grace was the lawful proprietor of the property and that she died on 30th May 2013. The land subsequently devolved to their sons through succession. PW3 produced the title deed in Grace's name, her death certificate, and a later search confirming registration in the names of their sons.
29. The 2nd respondent's alleged registration as proprietor was effected in 2015, nearly two years after Grace's death. No transfer instrument, Land Control Board consent, or supporting documentation was produced to show how the deceased could have executed a transfer posthumously. The defence that the property had been gifted to him by his employer was patently untenable. A deceased person cannot execute a conveyance, and any registration based on such an instrument is void ab initio.
30. The 2nd respondent also failed to produce any transfer documents relied upon to effect the transfer from the deceased to himself. This omission was fatal, given that Grace had died two years before the purported transfer. Furthermore, there was no evidence that he obtained letters of administration, confirmed grant or authority that could have enabled him to lawfully deal with the estate of a deceased person.
31. Furthermore, when the complainant (PW1) discovered that the deceased's husband (PW3) was collecting rent from the property prior to the transaction, he sought clarification from the 2nd respondent. The 2nd respondent deceitfully informed him that PW3 was merely reclaiming a deposit he had previously paid for the property after failing to finalise his purchase. This statement was false and deliberately designed to mislead PW1 into believing that the 2nd respondent was the legitimate owner, thus inducing the completion of the sale transaction.
32. The testimony of the Land Registrar (PW5), who is the statutory custodian of land records, was notably limited and unsatisfactory. He failed to demonstrate how the 2nd respondent became registered as proprietor or to produce the transfer instruments, presentation book entries, or other supporting documentation from the Lands Office. The unexplained entry of the 2nd respondent's name in the land register, absent any lawful transmission or succession process, strongly suggests collusion or irregular dealings at the Lands Office.
33. It is also telling that the 2nd respondent, if indeed he believed the title to be genuine, did not produce it in his defence despite being afforded the opportunity to do so. The omission undermines his credibility and supports the inference that the purported title was forged or fraudulently obtained.
34. The financial evidence, as established by PW1, PW2, and the bank officer (PW4), showed that Kshs. 4.5 million was deposited into the 2nd respondent's account on 15th January 2016 and withdrawn almost immediately thereafter. This conduct, when considered alongside his false representation of ownership, demonstrates clear fraudulent intent. The 2nd respondent acted with full knowledge that he lacked a valid title, yet induced the complainant to part with a substantial sum of money.
35. The 2nd respondent's explanation was manifestly false, unsupported by any credible evidence, and inconsistent with the official records at the Lands Registry. The totality of the evidence demonstrates beyond reasonable doubt that he made a false representation of ownership, knew it to be false, intended to defraud, and succeeded in inducing the complainant to transfer his property in money to him.
36. Regarding the 1st respondent, the evidence on record demonstrates that his role was confined to introducing the complainant to the 2nd respondent and receiving a sum of Kshs. 250,000 as brokerage commission. There was no evidence that he had knowledge of the deceased's death, the falsity of the title, or that he participated in the fraudulent registration or sale. His conduct, though imprudent,



does not meet the threshold of criminal culpability under Section 313 of the Penal Code. His acquittal by the trial court was therefore proper and shall be upheld.

37. Upon an independent re-evaluation of the entire evidence, I find that the trial court erred in extending the benefit of doubt to the 2nd respondent. The prosecution evidence satisfied all the elements set out in *Dr. Edwin U. Onwudiwe v. Federal Republic of Nigeria (supra)* and under Section 313 of the Penal Code.
38. Accordingly, I find that the 2nd respondent knowingly and fraudulently obtained Kshs. 6,000,000 from the complainant by falsely pretending that he was the lawful proprietor of Dagoretti/Riruta/5809. His actions squarely meet the ingredients of obtaining by false pretences.
39. In the premises, I hereby make the following orders:
- i. The appeal against the 1st respondent, Boniface Ndung'u Kiuna, is dismissed in its entirety. His acquittal on both Count I and Count II is hereby upheld.
 - ii. The appeal against the 2nd respondent, George Wachira Kanyoni, in respect of Count I is dismissed. His acquittal on that count is upheld.
 - iii. The appeal partly succeeds against the 2nd respondent, George Wachira Kanyoni, on Count II for the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. His acquittal is hereby quashed and substituted with a conviction.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED THIS 20TH DAY NOVEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Timoi h/b for Mr. Mutuma for the Appellant

Mr. Mukundi for the Respondents

Karimi Court Assistant.

