



REPUBLIC OF KENYA



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**Kinuthia v Republic (Criminal Appeal E115 of 2025)
[2026] KEHC 1157 (KLR) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E115 OF 2025
DR KAVEDZA, J
FEBRUARY 10, 2026**

BETWEEN

JOHN NJENGA KINUTHIA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. A. Mwangi (C.M) on 19th October 2023 at Kibera Chief Magistrate's
Court Criminal Case No. 4126 of 2013 Republic vs John Njenga Kinuthia)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of obtaining money by false pretences contrary to section 313 of the Penal Code The particulars of the offence are that on 15th January 2010 at Muthangari area in Dagoretti District within Nairobi County, with intent to defraud, jointly with another not before court, obtained Kshs. 4,500,000 from Harban Singh Amrit trading as Seneca Investment Limited by falsely pretending that he was in a position to sell to the said Harban Singh Amrit trading as Seneca Investment Limited plot No. 3734/27 situated in Lavington Nairobi LR 13376 registered in the name of Multistage Investments Limited measuring 0.949 acres, a fact he knew to be false.
2. He was sentenced to pay a fine of Kshs. Two (2) million in default to serve twelve months imprisonment.
3. The appellant, aggrieved by both conviction and sentence, filed the present appeal through a amended petition dated 11th December 2025. He challenged the totality of the prosecution's evidence against which he was convicted. He complained that the charge sheet was defective. Further that the sentence was harsh and excessive. He urged the court the quash his conviction and sentence imposed.



4. This being the first appellate court, we are guided by the ruling in *Okeno v. R* [1972] EA 32. In this case, the court opined that a court of first appeal ought to re-examine all the evidence afresh and in an exhaustive manner, to come up with its own conclusions without overlooking the conclusions of the trial court, bearing in mind that it never saw the witnesses testify.
5. The prosecution's case was as follows: PW1 Herban Singh testified that he and his sons were directors of Seneca and Company Limited. Through an estate agent, Banaj, he was introduced to an advocate, Jowhal, who facilitated the company's purchase of LR No. 3734/27 along Muthangari Road. A sale agreement was executed by PW1's sons on behalf of the company, and a deposit of 10 per cent of the purchase price, amounting to Kshs. 4.5 million, was paid by cheque and transmitted to the sellers' advocates, M/s J.K. Opondo. PW1 stated that stamp duty was paid and transfer documents lodged. However, upon presentation, the Lands Office rejected the title as a forgery and retained it through an officer identified as Gachihi. The purported sellers were the appellant and Wilberforce Onyango Rahul.
6. PW1 further testified that after the transaction, he met the appellant in the company of Rahul, during which the appellant maintained that the title was genuine. In cross-examination, PW1 stated that the appellant was not present when the property was pointed out and that the land was unfenced at the time. An official search indicated that the sellers were jointly registered as proprietors in 1996. PW1 stated that the appellant was summoned to the Lands Office for verification but the relevant officer was unavailable. He added that although the appellant offered to refund the deposit, this was not possible due to retention of the title. PW1 noted that supporting documents such as rates demands and clearance certificates were issued in the name of the appellant and another. The balance of the purchase price, Kshs. 39,000,500, was not paid on the advice of counsel. In re-examination, PW1 denied any dealings with J.A. Orengo Advocate.
7. PW2 Eng Mahresh Merhtar testified that he was a director of Multistage Investments Limited, which purchased LR No. 3734/27 in 1997 from Wycliffe Adonija Onyango for Kshs. 8 million. He produced the original title and transfer documents, stating that an existing charge was discharged prior to registration. In 2010, police investigations prompted verification of ownership. PW2 stated that the property was fraudulently sold by Wilberforce Onyango Rahul and the appellant without Multistage's knowledge. Multistage filed High Court Civil Case No. 327 of 2011, where it was declared the lawful owner, leading to the registration of a caveat. In cross-examination and upon recall, PW2 confirmed the registration history, discharge of the charge, and ownership findings, though he lacked proof of rates payments and certain transactional documents.
8. PW3, Setpal Singh Jowhal, an advocate of the High Court of Kenya, testified that PW1 of Seneca Investments Limited, now deceased, was his client. In November 2009, he received instructions to facilitate the purchase of LR No. 3734/27, Muthangari Road, from vendors Wilberforce Onyango Rahul and John Njenga Kinuthia, represented by M/s Ombati, Otieno & Opondo Advocates. PW3 instructed the vendors' firm to assist with a land search at the Lands Office, working alongside his deceased conveyancing clerk, Joseph Kyova.
9. Following the search, a sale agreement was executed and a 10% deposit of Kshs. 4.5 million was paid via RTGS to the vendors' advocates, after two failed attempts. PW3 prepared the transfer and assessed stamp duty at Kshs. 1.8 million, which was paid. However, he was surprised when his clerk returned the transfer the same afternoon, reporting an unexplained interaction with the supposed owner. Upon inspection, PW3 noted the certificate of title included an original deed plan (irregularly attached) indicating prior subdivision and transfer to Gordon Hugh Wallace (IR 13376), from which he identified the transfer dated 15/01/2010 to Seneca Investments.



10. PW3 stated that the original documents were held by the Lands Office, which instructed the CID to investigate potential fraud. The transfer and certificate bore the endorsement of a registrar, Lubullelah, who initially denied signing but later confirmed the entry, revealing the matter as pending in official registers. PW3 engaged Mr. Anwarali to lodge a formal complaint, leading the Land Registrar to impound the documents and issue a Section 65 notice to the vendors to show cause why the transfer should not be expunged.
11. PW3 further testified that Walker Kontos Advocates, representing Multistage Investments Ltd., claimed prior ownership, showing a title with endorsements dating back to 1965 and a transfer to Multistage in 1997. PW3 confirmed the title provided to Seneca Investments was forged, refusing to honour the professional undertaking and advising against payment of the balance. He identified letters between his firm and the vendors' advocates, the sale agreement dated 26/11/2009, and detailed correspondence regarding attempted settlements, including refund of deposit and stamp duty.
12. PW3 stated he did not know the appellant personally, meeting him only in court during settlement negotiations. In cross-examination, he confirmed difficulties tracing official searches, the involvement of his clerk and Anwarali, and the irregular conduct of Registrar Lubullelah. He identified letters to Principal Registrar Gachihi confirming handover of the original title, but noted the complainant never physically saw the documents. PW3 testified that no refund of the purchase price was ever made, that vendors frequently changed advocates, and that the RTGS deposit was successfully completed after multiple failed attempts.
13. PW4, Sarah Chelimo Maina, Principal Land Registration Officer at the Central Registry, testified that on 12/07/2016 a Dagoretti police officer served her with a summons to produce documents relating to LR No. 3734/27, Title No. IR 13376. She retrieved the records and identified the register showing Multistage Investment Ltd as registered proprietor on 14/10/1997, providing a certified copy to the CID. She also identified a summons issued by her predecessor, Mr. Gachihi, requiring John Njenga Kinuthia and Wilberforce Rahul to appear before the Registrar on 5/5/2010, which they failed to do, with no record of hearing or ruling.
14. PW4 identified the original transfer from Kinuthia and Rahul to Seneca Investments Limited, marked as impounded fake documents, purportedly registered by Registrar F.I. Lubullelah. She explained that genuine transfers are entered in the official register, but the documents for Seneca did not appear. She also identified a fake original title showing registration to Seneca on 31/10/1996, with transfer dated 22/2/2010. Exhibits included the certified copy of Multistage's title, summons to Kinuthia, and the fake transfer and title.
15. PW4 explained under the Registration of Titles Act that the register held in the Registry is the authoritative record; only one original title exists. The fake title to Seneca did not match the registry. A lost title may be replaced by a provisional one or a reconstructed copy from the original, which in this case was done on 13/4/2010 from Multistage's original. She confirmed that entries in the original and reconstructed titles must correspond, but the fake title's entries did not align.
16. PW4 further stated that leasehold land rent is payable at the Ministry and that proof of rates payment is required for transfers. She did not know the appellant and was unaware of any complaints regarding his title. In cross-examination, she confirmed her role in the Registry, noted the fake title was impounded, and that she could not ascertain when CID officers inspected it before 12/07/2016. She clarified that expungement orders are only applied to genuine entries; fake entries are cancelled and not recognised. The signature on the fake title was not Lubullelah's. She also stated stamp duty is not paid using a title and that no rates clearance was required for her testimony.



17. Upon recall, PW4 confirmed that no provisional certificates had been issued at the time of her statements and that the register in question had been reconstructed. She explained that provisional titles are issued following gazette and a 90-day period under the repealed Act, quoting the gazette notice when issued. Searches showed no provisional certificates were issued in relation to this land.
18. PW5, CI Geoffrey Chania, a document examiner and handwriting expert at the DCI Forensic Documents Examination Section, testified that he received several questioned documents on 21/7/2016, including certificates of title and instruments of transfer for LR No. IR 13376 and IR 8941/80, along with known signatures and stamp impressions from the Lands Registry and John Njenga. Upon examination, he concluded that the signature on the first and second documents matched the known signatures from the Registry, but the third questioned document (P Exhibit 18) had a signature by a different author, and its stamp impressions differed, rendering it a forged document. The signature on the fourth questioned document (P Exhibit 17) matched known signatures of John Njenga, while others varied in style.
19. He explained that he captured images via a video spectrum comparator machine, compiled a report on 21/07/2016, and produced the report, images, and memo as exhibits. In cross-examination, he confirmed that he worked from certified copies and known signatures only, not witnessing signings. On re-examination, he stated that results would be consistent whether originals or clear copies were used.
20. PW5 testified again on 14/3/2019 as PW10, examining certificate of title IR 13376 (P Exhibit 18), specimen signatures and stamp impressions of F. Lubullelah and Rosina Mule. He concluded that neither appended their signatures on P Exhibit 18 and that the stamp impressions differed from known Registry officials, confirming the certificate as forged. His report, signed 15/2/2018, and accompanying memo were produced as exhibits.
21. In cross-examination, he noted differences between the questioned document and defence documents (DMFI 10 and 11), confirming variations in content and signatures.
22. PW6, CPL Jairus Namiti, a police officer attached to CID Dagoretti, testified that on 12/7/2016 he served a summons on Land Registrar Sarah Maina at Ardhi House, who produced documents including a purported fake transfer form and land certificate, and recorded her statement. He identified the documents in court and the summons issued by the Registrar to John Njenga and Wilberforce Rahul on 24/2/2014. PW6 forwarded the documents, including certificates of title, instruments of transfer, fake deeds, and known signatures of Registry officials and John Njenga, to the document examiner and later collected the reports, which he identified in court. He obtained the appellant's known signatures from acknowledgments of payments and handwritten statements but did not witness them being signed or the money received.
23. PW7, George Gachichi, a former Land Registrar at the Central Registry until 2011, testified that in 2010 an advocate for Seneca Investments presented title IR 13376 (Ref 3734/17) for verification. The title, with a transfer dated 15/01/2010 from John Njenga Kinuthia and Wilberforce Onyango to Seneca, appeared suspect due to an annexed deed plan, contrary to proper registration practice.
24. He impounded the title and transfer, summoning the registered proprietors to appear on 5/5/2010 and copies were retained in the office. He identified historical titles and transfers, including Hugh Gordon Wallace (1957) to Wycliffe Adonija Onyango (1965) and Multistage Investment Ltd (1997). He concluded the impounded title was fake and advised that the matter be reported to the police. PW7 did not know the appellant and noted that stamp duty could be paid even on a forged title. He told the court that he never met the appellant or the certain advocates involved.



25. PW8, Rosina Ndila Mule, who worked at the Ministry of Lands between 1989 and 2014, testified that title IR 13376 bore a forged transfer purportedly signed by her on 31/10/1996. She denied the signature, noting she was on maternity leave, and identified discrepancies including an anachronistic deed plan dated 31/1/1992. She provided specimen signatures to CID and testified she had no interaction with the appellant or the parties presenting the document.
26. PW9, Fedrick Indiko Lubulela, Senior Land Registrar, testified that his signature and stamp were forged on the transfer to Seneca (IR 13376/3). He provided specimen signatures and impressions to CID, denied prior involvement, and confirmed that expungement orders are applied to genuine records only. He stated he had never interacted with advocates Jowhal or Anwarali regarding the matter.
27. PW11, the branch operations manager at I&M Bank, Kenyatta Avenue, testified that on 6/3/2015 he was served with warrants to produce documents relating to account No. 00100xxxxxxxx of S.S. Jowhal & Co. Advocates. He provided account opening documents and statements for 1st to 31st December 2009, showing a debit of Kshs. 4.5 million on 14/12/2009 via RTGS to Ombati Otieno & Opondo Advocates. He produced the statements and a certificate under Section 65(8) of the *Evidence Act*. On cross-examination, he clarified that the statement did not show the beneficiary's account number, and in re-examination noted that the RTGS form would contain those details.
28. PW12, formerly at ECO Bank (2013–2019), produced documents and statements for account No. 06-30xxxxxx of Ombati Otieno & Opondo Advocates for 10th – 31st December 2009, confirming receipt of Kshs. 4.5 million via RTGS. He explained procedural checks for police orders and changes in account numbers following ECO Bank's acquisition of EABS Bank.
29. PW13, the investigating officer, testified that in 2012 he reviewed police file No. 144/171/2012 concerning Wilberforce Onyango Rahul, John Njenga Kinuthia, and the late Harbans Singh, regarding the deposit of Kshs. 4.5 million for LR No. 3734/27 (title IR 13376). He arrested the appellant in Naivasha, obtained bank statements confirming the RTGS transfer to Ombati Otieno & Opondo Advocates, and verified a forged title deed presented by Seneca Investments' advocate. He produced summonses for the proprietors under Section 65(1) of the Registration of Titles Act, noting that they did not appear.
30. PW13 further traced the property's history, including Multi-stage Investment Ltd's ownership, and obtained corporate and title documents from Walker Kontos Advocates and the Registrar of Companies. He confirmed the appellant's age via the Registrar of Persons and identified documents showing the deposit, stamp duty, and partial rate payments in the appellant's name. He noted that some documents were never produced to the prosecution or not part of the police file, including defense exhibits and old discharge documents, clarifying they were unrelated to the alleged fraudulent transaction.
31. He explained that searches on the land were conducted before the deposit, but the transfer lodged by the appellant was not independently verified as it stopped after the forgery was discovered. PW13 confirmed that Multi-stage Investment had temporarily lost its title, which was later reconstructed and gazetted, and that the street value of the property was Kshs. 300 million. He stated he did not see the need to call every person listed in the documents as witnesses, relying on documentary evidence.
32. In his sworn defence, the appellant maintained his innocence. He told the court that he and Wilberforce Onyango jointly purchased land parcel LR No. 3734/27 (original 3734/3/22) in 1996 from Hugh Gordon Wallace for Kshs. 4 million, with conveyancing handled by their advocate, Dominic Ombati. He stated that they paid land rates until 2010, producing a rates clearance certificate dated 23/12/2009 and additional invoices and receipts to confirm ownership.



33. He explained that in 2009 they agreed to sell the land to Seneca Limited for Kshs. 45 million, paying a deposit of Kshs. 4.5 million via Ombati, who instructed the transfer. The appellant denied seeing the title deed lodged with the Lands Registry or the title produced as P exhibit 18, stating it differed from the copy in P exhibit 46 and lacked the figure Kshs. 4 million. He maintained that the transfer in question was prepared by S.S. Jowhal on behalf of Seneca, and that he never met Harbans Singh, nor received any money from him.
34. He recounted interactions with Chief Inspector Njeru at DCI, confirming that land records showed the land was still registered in his and Wilberforce's names despite claims of transfer to Seneca. He also described attempts by their advocates to recover the original title and his compliance with summonses issued by the Lands Office.
35. The appellant produced evidence of prior land registration, payments of stamp duty, and discharge of bank charges, asserting discrepancies in documents presented by the prosecution, including inconsistent references to Standard Bank and Standard Chartered Bank. He admitted that P exhibit 18 was forged but stressed that the original title submitted to their lawyer was genuine.
36. In cross-examination, he clarified that sale agreements and other documentation were with his advocate and that payments for the land and rates were made through Ombati. He stated that the words "Kshs. 4 million" in P exhibit 46 were added by hand on a photocopy. He reiterated in re-examination that no one disputed the actual payment of Kshs. 4 million for the land, and that no witness confirmed alteration of the documents.
37. After the close of the defence, the appellant was convicted and sentenced accordingly.
38. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
39. The appellant was charged with the offence of obtaining money by false pretences contrary to section 313 of the Penal Code. It 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.”
40. The prosecution is required to establish that the appellant obtained something capable of being stolen; obtained it through a false pretence; and with the intention to defraud. A false pretence, under section 312 of the Penal Code, is defined as a representation made by words, writing or conduct of an existing fact, which is false, and which the person making it knows to be false.
41. In the present matter, the evidence demonstrates a complex scheme involving land transactions, forged documents, and disputed ownership. The appellant denied all charges, asserting that he and Wilberforce Onyango jointly purchased the land parcel LR No. 3734/27 (original 3734/3/22) from Hugh Gordon Wallace in 1996 for Kshs. 4 million, through their advocate, Dominic Ombati, who conducted all conveyancing transactions on their behalf. The appellant maintained that the land was registered in their joint names and that they had exercised due diligence in managing and selling the property. He further testified that they paid all applicable land rates until 2010 and produced a rates clearance certificate dated 23/12/2009, alongside additional invoices and receipts evidencing continuous ownership and rate payments.



42. The appellant further explained that in 2009, they entered into a sale agreement with Seneca Limited for Kshs. 45 million, signing the agreement and paying a 10% deposit of Kshs. 4.5 million through their advocate. He asserted that Ombati subsequently instructed them to transfer the land, but that the balance of the purchase price was never paid. The appellant contended that the transfer in question was prepared by S.S. Jowhal, acting for Seneca, and denied authorising or lodging any documents at the Lands Registry. He further denied ever meeting Harbans Singh or receiving any payment from him, nor did he have personal interaction with the documents later produced.
43. Evidence from prosecution witnesses, however, established that the title deed produced as P exhibit 18 was a forgery. PW7, a former Land Registrar, noted that the deed plan attached to the impounded title was issued decades after the original registration, highlighting its inauthenticity. PW8 and PW9, also Land Registry officials, denied signing or authorising entries on the questioned title and confirmed discrepancies in the stamp impressions and signatures. PW11 and PW12 provided bank evidence confirming that payments relating to the land transaction were processed through accounts controlled by the appellant's advocates, indicating a financial trail linking the appellant to the disputed transaction. PW13, the investigating officer, further corroborated the sequence of events, demonstrating that the appellant was aware of the land transfer and the deposit payment and that the title lodged at the Lands Registry did not correspond with the genuine title submitted to their advocate.
44. The appellant's defence rested on the claim that he acted in reliance on his advocate's instructions and that the original title deed was in the advocate's possession. He emphasised discrepancies in the documents, including the handwritten addition of "Kshs. 4 million" and the fact that P exhibit 18 differed from the copy maintained by his lawyer. He also explained that payments for the land and rates were conducted through his advocate, asserting that the registration and transfers alleged by the prosecution were carried out without his knowledge.
45. Under section 111 of the *Evidence Act*, where a fact is peculiarly within the knowledge of an appellant, the burden of proof rests upon him. In this case, the appellant was aware of the land purchase, the payments made, and the instructions provided to his advocates. Having admitted involvement in the transactions, he bore the responsibility of providing a credible explanation regarding the registration, transfer, and alleged forgery. The appellant's inability to produce original documentation, including the land sale agreement, receipts, or confirmation of lawful transfers, limited the credibility of his defence.
46. The evidence against the appellant, though largely circumstantial, formed a coherent chain establishing his knowledge and involvement. The Court of Appeal in *Sawe v Republic* [2003] KLR 364 held that circumstantial evidence must form a complete chain excluding any reasonable hypothesis of innocence. Likewise, in *Musili Tulo v Republic* [2014] eKLR, the Court stated that such evidence must irresistibly point to the appellant and no one else as responsible for the offence. Here, the combination of the forged title, inconsistent documentation, bank records, and testimony from Land Registry officials and investigators created a chain of circumstances consistent solely with the appellant's knowledge and facilitation of the fraudulent land transfer.
47. The appellant's claim of acting as an intermediary through his advocate collapses under scrutiny. The funds related to the transaction were processed and handled in a manner inconsistent with innocent agency. He admitted that he never lodged the title or personally engaged in registration activities, yet he had knowledge of the sale, deposit payments, and subsequent transfer process. By allowing the forged title to be lodged and by asserting ownership while being aware of inconsistencies in documentation, the appellant became a key link in the chain of deception. The law recognises that one who knowingly facilitates a fraudulent transaction, even indirectly, is culpable under section 313 of the Penal Code.



48. Furthermore, the appellant's explanation remained uncorroborated. He failed to produce Ombati, Jowhal, or any other relevant witnesses to substantiate his version of events. The original title deed and sale agreement were not tendered in evidence, and the appellant did not provide documentary proof to reconcile the discrepancies between the genuine and forged titles. His defence relied heavily on assertions rather than evidence, which is insufficient when the prosecution has established a chain of facts pointing to fraud.
49. In the circumstances, the circumstantial and direct evidence presented which comprised of expert testimony on forgery, bank records of deposits and transfers, and corroborating statements from Land Registry officials, was sufficient to establish beyond reasonable doubt that the appellant knowingly participated in or facilitated the fraudulent transfer of land and related funds. His failure to provide a credible explanation for the inconsistencies and forged documentation justified the trial court's findings.
50. In conclusion, the appellant's knowledge of the transaction, the possession and handling of the disputed funds through his advocates, the lack of genuine documentary evidence supporting his claims, and the expert determinations of forgery collectively demonstrate that he was a participant in the fraudulent scheme. The circumstantial evidence forms a complete and coherent chain, excluding any reasonable hypothesis of innocence.
51. Accordingly, the findings of the trial court that the appellant knowingly facilitated or engaged in the fraudulent transfer of land and related funds are well-founded, cogent, and legally sound.
52. The appellant contended that the charge sheet was defective. Upon examination, no such defect is established. The law permits the prosecution to amend the charge sheet at any stage prior to the close of their case. In this instance, the prosecution exercised that right appropriately.
53. In the premises, the appellant's contention fails, and the conviction is accordingly upheld.
54. The appellant was sentenced to pay a fine of Kshs. 2 million in default to serve 12 months imprisonment. The court considered his mitigation, he was a first offender and the pre-sentence report. The trial court exercised discretion and I therefore see no reason to interfere.
55. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.
- Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 10TH DAY OF FEBRUARY 2026

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant

