



**Mohamed v Republic (Criminal Appeal E026 of 2025)  
[2026] KEHC 1688 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1688 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL APPEAL E026 OF 2025  
JN ONYIEGO, J  
JANUARY 23, 2026**

**BETWEEN**

**YUSSUF KADHAR MOHAMED ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the conviction and sentence of Hon. J. Omwange –  
delivered on 27.06.2025 in Garissa CM’s Court in Criminal Case No. E186 of 2024)*

**JUDGMENT**

1. The appellant was convicted of obtaining money by false pretence contrary to section 313 of the Penal Code.
2. The particulars of the offence were that on diverse dates between 06.01.2024 and 08.01.2024 at Garissa Township area within Garissa County, jointly with another not before court, with intent to defraud, he obtained money Kes. 394,000/- from Ibrahim Salah Adomow by falsely pretending that they were in a position to supply and deliver to him electric cables in large quantities within a period of five days a fact he knew to be false.
3. Having denied the charge, the case proceeded to full trial with the prosecution calling three witnesses. The appellant was subsequently convicted and sentenced to serve 2 years’ imprisonment. Additionally, pursuant to Section 175 (2)(b) of the Criminal Procedure code, he was directed to pay compensation of Kes. 394,000/- to the complainant. In default of the said payment of compensation, the amount remained recoverable as a civil debt.
4. Having been dissatisfied by both the conviction and sentence, he filed this appeal in person citing grounds that; He was never informed of his right to legal representation; the trial magistrate failed to appreciate that his sister merely used his cellphone number to receive the alleged funds hence he was not involved in any deal to obtain the money by false pretence; the prosecution failed to produce



- the witness who witnessed the deal between the complainant and feiza who is now free; the sentence imposed is excessive in the circumstances.
5. The appeal was canvassed by way of written submissions.
  6. The appellant argued in his written submissions that the sentence imposed by the trial court was excessively harsh in the circumstances. He stated that although sentencing is a matter of judicial discretion, the trial magistrate did exercise that discretion arbitrarily. He maintained that, being a first-time offender, he ought to have received the most lenient sentence available. He further urged this court to set aside the order requiring him to compensate the complainant in the sum of Kes. 394,000/-He basically reiterated his grounds of appeal.
  7. Mr. Owuor, the prosecution counsel, in his written and oral submissions, conceded that the conviction was improper. He noted that the complainant did not know the appellant prior to his arrest and that the manner in which the appellant received the money could not be deemed fraudulent. He explained that the agreement was between Faiza and the complainant, and that the appellant's phone number had merely been used to facilitate payment after Faiza shared it.
  8. He further stated that the appellant was not involved in the transaction between PW2 and Faiza, and that neither the charge sheet nor the facts established any conspiracy between them. He pointed out that the agreement did not specify a delivery timeline, and since the complainant reported the matter only three days after the last instalment, the alleged five-day period had not elapsed.
  9. Mr. Owuor concluded that the prosecution had failed to prove beyond reasonable doubt that the appellant obtained the money through false pretence with intent to defraud, emphasizing that the element of "facts known to be false" was not established. He therefore urged the court to quash the conviction and set aside the sentence.
  10. This is the first appellate court. As is expected of me, I have to thoroughly re-analyze and re-evaluate all the evidence presented before the lower court and draw my own conclusions, bearing in mind that I neither saw nor heard any of the witnesses. In so doing, I am guided by the renowned case of Okeno vs Republic [1972] EA 32.
  11. PW1, No. 83536, Cpl. Ronald Emase attached to Safaricom from DCI Headquarters as a law enforcement data analyst stated that, pursuant to Miscellaneous Application No. E008/2024, the court ordered the production of Mpesa statements for two telephone numbers: 0727703329 registered to Ibrahim Sala Amidow under ID number 27959405, and 0725701545 registered to Yussuf Khadar Mohamed the appellant herein under ID number 10123717.
  12. He stated that, after producing the documents, the investigating officer asked him to confirm whether there had been transactions between the two numbers. He confirmed that on 06.01.2024, number 0727703329 transacted with 0725701545 for Kes. 10,000. On 07.01.2024, two further transactions of Kes. 161,000 and Kes. 145,000 were recorded, and on 08.01.2024, another transaction of Kes. 78,000 took place. He stated that the total amount transacted was Kes. 394,000 and that these transactions were reflected in the Mpesa statements in both numbers. He added that he sent the two statements to the investigating officer.
  13. PW2, Ibrahim Salah Adonow stated that on 29.12.2023 at about 9.00 p.m., he met Faiza, who later expressed interest in supplying him with electrical items. He testified that he majors in networking and that Faiza asked him to partner with her brother, Mohamed Khadar Yussuf the appellant herein whose telephone number was 0725701545. He said that they agreed to contribute Kes. 400,000 for the partnership to which he had already sent Kes. 10,000 for registration. He testified that on 07.01.2024, he sent Kes. 161,000 followed by Kes. 145,000, and on 08.01.2024, he sent Kes. 78,000, making a



total of Kes. 394,000. He added that after receiving the money, Faiza and her brother disappeared and stopped answering calls.

14. He further stated that on 11.01.2024, he reported the matter to the police who proceeded to arrest the appellant. That during the arrest, a Samsung phone, model A045 was recovered from the appellant. He emphasized that he had never met the appellant before and that all the communication held was online. He added that he only saw the appellant for the first time upon his arrest. On cross-examination, he explained that he had a Facebook call with the appellant's sister, who gave him the appellant's telephone number.
15. PW3, No. 75925 Police Constable Joseph Mutoye Jonathan, the investigating officer, stated that on 12.01.2024 at 1600 hours he was assigned this case by the acting DCIO under OB21/12/1/2021. He explained that he began investigations by recording the complainant's statement, in which the complainant reported meeting one Faiza and agreed to start a joint venture together with the appellant. That each member was to contribute Kes. 400,000 to total Kes. 1.2 million for the wholesale supply of electronic cables, with delivery expected within five days of full payment. He said that between 6 January and 8 January 2024 the complainant paid Kes. 394,000 to mobile phone number 0725701545, which had been provided by a lady known as Faiza.
16. He added that on 15.01.2024, he prepared an affidavit in Miscellaneous Application No. E008 of 2024 and produced details of the mobile number, confirming that Kes. 394,000 had been sent, as reflected in Pex 1. He further stated that on 19.03.2024, the complainant accompanied by police officers from Dagale Police Station and assisted by villagers, arrested the appellant who was equally within Dagale area.
17. That A Samsung Galaxy A045 phone with IMEI numbers 259118660582331 and 3596214505582333 were recovered. He confirmed that the phone was paired to Safaricom number 0725701545 registered to Abdimalik Hussein Abubakar alias Yussuf Khadar Mohamed. He concluded that upon arresting the appellant, he prepared an inventory of the recovered items and subsequently charged him.
18. DW1, Abdimalik Hussein Abubakar explained that he lived in Dadaab with his parents and that the complainant had sought for a relationship with his sister, who used his number to receive money from the complainant while they were engaged in business. He said that there was communication between Faiza Hussein Bashir and Ibrahim Abdul, the complainant, and that Faiza had been using the telephone number +17742329980 together with her bank account. He reported that the complainant sent money three times between the 6th and 8th, amounting to Kes. 394,000, but after disagreements arose, Faiza blocked him. Abdimalik maintained that he was being framed and emphasized that he neither dealt in electricity nor related equipments.
19. He further stated that Faiza was his neighbour with whom he spoke frequently, and that the sum of Kes. 394,000 had been sent to a telephone number whose full details he could not recall. He added that he had known Faiza since June 2023 and that no one else was aware of the transactions apart from himself and Faiza. He mentioned that in as much as he was found with the phone, the dealings were between Faiza and the complainant, not himself.
20. I have considered the grounds of appeal, submissions by both parties. Issues for determination are; whether the conviction was supported by evidence proving the offence of obtaining money by false pretence beyond reasonable doubt; whether the order for compensation was properly done and whether the sentence was excessive.



21. Section 313 of the Penal Code creates the offence of obtaining by false pretences 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.”

22. Section 312 of the Penal Code does define ‘false pretence’ as hereunder: -

“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 pretence.”

23. In the same breadth, the ingredients of the offence of obtaining by false pretences contrary to section 313 of the Penal Code were also enumerated in the case of *Amugo vs Republic High Court (Kisumu) Criminal Appeal No. 320 of 1980 (unreported)* as follows: The offence of obtaining by false pretences has eight possible ingredients which have to be proved beyond doubt before an accused person is convicted. They are as follows: a. a false representation; b. which is made; c. by words or writing or conduct; d. of a matter of fact; e. either past or present; f. with knowledge of the falsehood or without belief that the presentation is true; and g. the representation causing the giver to part with the thing obtained. The court stated that all eight ingredients must be established beyond reasonable doubt for a conviction to be obtained.

24. Thus the key element is the aspect of ‘false pretense’. According to *Black's Law Dictionary, 9<sup>th</sup> Edition* defines “false pretense” at page 678 is defined as follows:

“The crime of knowingly obtaining title to another’s personal property by misrepresenting a fact with the intent to defraud.”

25. In the instant case, the prosecution during the trial of this case relied heavily on the evidence of PW2, the complainant and that of PW3, the investigating officer. A review of the evidence on record shows that the complainant’s dealings were with Faiza, not the appellant. The appellant’s phone number was merely used to facilitate payment, and there is no evidence of conspiracy or joint enterprise between the appellant and Faiza.

26. The charge sheet alleged delivery within five days, yet the complainant reported the matter only three days after the last instalment, before the alleged period had elapsed. As submitted by Mr. Owuor, it indeed remained unclear when the five days commenced and lapsed. As such, the element of false pretence which requires proof of a representation of fact known to be false at the time it was made was not proved. Additionally, the representation concerned future conduct (delivery of goods). It is trite that for an action to amount to a false pretence, it must be of past or present facts, not future facts. Lord Devlin, in the case of *J. R vs Dent [1955] 2 Q.B. 594*, stated:

“...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. In this case, I will aim to determine whether the prosecution has established the eight elements to the required standards and whether the facts were present or past”.



27. In my considered view, neither the charge sheet nor the facts of the case revealed out any aspect of conspiracy between Faiza and the appellant. There is no doubt that the alleged money was sent through the appellant's number a fact the appellant has explained which creates doubt as to his involvement in the alleged conspiracy which in any event is not the charge before the court. It is possible and a normal occurrence in real life experience that some people do receive money through relative's phone numbers.
28. It is not in doubt that the prosecution failed to prove beyond any reasonable doubt that the appellant obtained the amount in question in false pretence and with intention to defraud the complainant. The 'facts he knew to be false' part was not proved as time had not elapsed and it was an intention of future conduct.
29. Law, J.A. in the case of Abdallah vs Republic, [1970] E.A. 657 at page 658 said that a representation as to a future event cannot support a charge of obtaining money by false pretences. Equally, in the case of Mathlida Akinyi Oware vs Republic, [1989] eKLR, the Court of Appeal held that the fact of obtaining by false pretences does not relate to future events.[ Also see the case of Odhiambo vs Republic (Criminal Appeal E067 of 2022) [2023] KEHC 22553 (KLR)].
30. As to whether he was not informed of his right to legal representation, there was no prejudice occasioned as the offence preferred is a misdemeanor. In any event, he adequately represented himself. As to the question of sentence, the same has been rendered moot given that the conviction has been quashed.
31. As already stated above, I am inclined to find that the prosecution did not prove its case to the required standard to warrant a conviction.
32. The upshot of the above is that the appeal succeeds and the conviction by the trial court is hereby quashed and the sentence set aside. The appellant is hereby set at liberty forthwith unless lawfully held.

ROA 14 days

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF JANUARY 2026**

**J. N. ONYIEGO**

**JUDGE**

