



REPUBLIC OF KENYA



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Mureithi alias Moses Muchira Kabuthia v Republic (Criminal Appeal E018 of 2023) [2025] KEHC 7061 (KLR) (28 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E018 OF 2023
JK NG'ARNG'AR, J
MAY 28, 2025**

BETWEEN

**NAHASHON MURAGE MUREITHI ALIAS MOSES MUCHIRA
KABUTHIA APPELLANT**

AND

REPUBLIC RESPONDENT

(Being an appeal against the judgment of Hon. P.M. Mugure (PM) made in Wang'uru Criminal Case No. 672 B of 2018 on 24/2/2023 and the sentence meted on 15/3/2023)

JUDGMENT

1. The appellant with others before this court was charged and convicted for four counts of obtaining money by false pretense contrary to section 313 of the *Penal Code*, Cap 63 Laws of Kenya, one count of personation contrary to Section 382 of the *Penal Code* Cap 63 Laws of Kenya and four counts of conspiracy to commit a misdemeanor contrary to Section 394 as read together with Section 36 of the *Penal Code* Cap 63 Laws of Kenya. Each of the four counts of obtaining by false pretence had a corresponding charge of conspiracy to commit a misdemeanor.
2. The appellant was convicted and sentenced to two years of imprisonment per count on count 1-4 and 1 year of imprisonment per count on count 5-9 and the sentences were to run consecutively thus a total of 11 years. Being aggrieved he filed an appeal challenging his conviction and sentence.
3. In his petition of appeal dated 28/3/2023 he raised 6 grounds which have been coalized as follows: He faulted the trial court for disregarding the contradictions and inconsistencies in the prosecution's case, for forcing the appellant to proceed with the hearing when he was unwell, for declining the appellant's application to recall witnesses for cross examination and for failing to consider the appellant's defense.
4. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate and reanalyze the evidence afresh and come to its own conclusion on that evidence. The court should



however bear in mind that it did not see witnesses testify and give due consideration for that. (See *Okeno v Republic* [1972] EA 32)

5. The prosecution called twelve (12) witnesses in support of their case. PW1 testified that on 10/6/2018 he met Phyllis (PW5) and Njongu who showed him a piece of land on sale and later took him to a lawyer's office where he met the appellant who posed as the land owner together with his wife. That he signed the sale agreement dated 30/6/2018 and gave the appellant Kshs. 150,000/= for one acre and later paid Kshs. 10,000/= for survey. That he went to the land on 30/7/2018 and the lawyer divided it while posing as a surveyor and all buyers were allocated their land and beacons. That the following day, he went to clear and cultivate the land when other people came who also wanted to clear the land and they all reported the issue at the police station. That the other people also had similar documents to his. That the appellant then disappeared without refunding the money and PW1 never got the land.
6. PW2 testified that he was informed about the land by PW1 and after seeing it together with PW1 and Phyllis PW5, he paid Kshs. 150,000/= on 30/7/2018 after signing an agreement dated 30/6/2018 which was witnessed by PW5 and signed by the appellant. That he gave the money to the appellant who put it in his pocket. That the appellant signed the transfer on a different date and the advocate surveyed the land on 7/9/2018 but as PW2 was cultivating, he was told the land was not his and Moses Muchira Kabuthia had passed on in March 2018 as informed by his children. That he neither got the land or his cash back.
7. PW3 also testified that the appellant sold the land to her after PW5 had taken her to see the land on 18/8/2018. That she confirmed that the title no. 3346 South Ngariama belonged to Moses Muchira Kabuthia. That she was then shown the appellant as the land owner and the lawyer prepared the agreement dated 22/8/2018. That the appellant had the ID for Moses Muchira Kabuthia and gave the appellant Kshs. 300,000/= after withdrawing the same at Mbingwa Sacco and the appellant gave her Kshs. 10,000/= back for survey and later signed the transfer form at the lawyer's office. That the lawyer later subdivided the land and she started cultivating the land but was informed that her people had been chased away. That she was informed by the land chief that the land owner died in March 2018 and his children had the documents. That she lost both the land and money and it was after the appellant was arrested that she discovered his name Nahashon Murathe Mureithi and not Moses.
8. PW4 similarly testified that the appellant sold him land after Phyllis had showed it to him. That on 27/8/2018 he met the appellant's wife among others at the land office where he verified that the records was okay and they went to the lawyers office where the appellant joined them and informed that he was the landowner. That he was given another person's agreement to show that people were buying land and he checked Moses ID with his photo which was the one in Jane's agreement for land number 3346. That he paid Kshs. 250,000/= and was to pay Kshs. 50,000/= after 3 months. He signed the agreement dated 27/8/2018 and was given a yellow card by the appellant signifying that he was the land owner. That the lawyer later sub-divided the land and PW4 sent someone to clear the land but was stopped by another owner prompting him to report the issue at Wang'uru station. That the appellant's phone went off and PW4 later found out that the owner Moses Muchira had passed on and the appellant was not the owner. He thus lost the land and Kshs. 250,000/=.
9. PW5, Phyllis, testified that the appellant was known to her. That he sold land to four people and was present when he sold land to Elisha and she even witnessed the agreement. That another lady took the Kshs. 300,000/= and gave it to the appellant who put it in his pocket. That she also witnessed PW2 give Kshs. 300,000/= to a lady accompanying the appellant who gave it to the appellant. That the buyers would give money to the lady who would then count it and hand over to the appellant. That she was the appellant's wife.



10. PW6 testified that he was with two others, John Muthua and Lukes Mwangi when he met the appellant and the other lady who informed that land No. 3346 belonged to her and the appellant. That Moses Muchira was the seller. That John Muthua bought the land at Kshs. 300,000/= and gave it to the brown lady who counted it and gave her husband Kshs. 100,000/= and he witnessed their agreement. That when John tried to clear the land, the original owners appeared. That he saw the appellant's name and ID which was Moses Muchira Kabuthia and he saw the appellant signing the agreement.
11. PW7 testified that he was present when Elisha signed the agreement in Kerugoya while at the lawyer's office at Kshs. 300,000/= and that he met the owner of the land, the appellant. That Mukundi and Ephantus paid Kshs. 300,000/= and he witnessed it.
12. PW8 testified that he was in Nairobi when his sister informed him that there were people in his father's land No. 3346 3 acres. That he went to the police post and was informed that the buyers had an agreement and bought land in August 2018. That the agreements had his father's name but the ID was not his. He added that his father died on 16/3/2018 and he had the death certificate. That the land was still in his father's name and the family never agreed to sell it. He did not know the appellant. On re-examination, he confirmed that the deceased was his uncle and that it was his cousin who informed him of the buyers.
13. PW9 testified that one Waruguru called her and informed that her land was being sold, No 3346 and she went to view it. That she then met PW5, Phyliss as someone was interested in the land and she took her to the land shown by Waruguru. That the land owner, the appellant herein, joined them and a search was done. That the buyers were interested and went to the advocates officer where Mukundi and another person were buying 1 acre which they were to share. That he bought at Kshs. 300,000/= and gave the money to the appellant when she was presented and she witnessed the agreement by signing. That at the advocate's office, she saw the documents for No. 3346 and also saw the land owners ID and photo on the ID and it was the appellant.
14. PW10 was the documents examiner. She testified on the sale agreements PEXH 1,2,3 and 4 and the specimen signatures in the sale agreements and stamp impression of PW11 who witnessed the agreements. PW10 confirmed that the agreements were made by the persons whose names appear on them and the stamp was by Igati Mwai & Co. Advocates. That the only signature that did not tally was that of Moses Muchira Kabuthia, the deceased. The report was PEXH11.
15. PW11 was the lawyer. He confirmed that the appellant sold the land as per the evidence of PW1-PW9 and testified that he prepared all the sale agreements PEXH1-4 and executed them in the presence of the appellant and all the buyers who had their witnesses. He however testified that he did not know the appellant before the transactions.
16. PW12, the investigating officer, testified that all the transactions were done by the buyers who gave the appellant money over sale of land in South Ngariama No. 3336 measuring 3 acres. That it was however established through investigations that the land was owned and registered in the name of Moses Muchira Kabuthia who was deceased as per PEXH5, the death certificate. That he died on 16/3/2018. That the complainants saw the appellant at Kerugoya on 24/10/2018 and PW12 alerted other officers at Kutus patrol base who went and arrested him.
17. He testified that the appellant had an ID card number 11289985 with the name Nahashon Murage Mureithi PEXH3 and it was confirmed by the registrar of persons that the ID was genuine as per report PEXH5. That the specimen signature from the appellant was different from the ones in the sale agreement and the ID number 1391586 for the deceased was not the one appearing in the sale agreement being 12289985 thus the appellant was charged with the instant offenses. That the appellant



received money for land that did not belong to him and was identified by PW1 and PW2 during the arrest.

18. Once put on his defense, the appellant testified that the charges were not true. That he was arrested when taking his child to school at National Oil Kutus. That he did not have any land in South Ngariama No. 3346 and had not sold any land there. That on 30/7/2018, he was working driving the Kerugoya-Nairobi route and was not at the lawyer's office. That he knew the lawyer as a client in his matatu but had never conducted any business with him. That the ID and name appearing on the sale agreements was not his and the signature thereon was not his. That his wife was Caroline Wanjiku Murage and she was not light skinned. He testified that he never showed anyone land and never received any cash. That the witnesses only identified him because he was wearing a jacket similar to that worn by the person who defrauded them. He denied knowing anyone by the name Rose Wanjira and that he never knew or impersonated Moses Kabuthia.
19. In it's judgment, the trial convicted and sentenced the appellant as summarized earlier on.

Analysis and Determination.

20. I have seen and considered the appellant's submissions dated 13/12/2024, the respondent's undated submissions, as well as the entire record.
21. This court has re-evaluated the facts of this case. Section 313 of the *Penal Code* (Cap 63) Laws of Kenya provides 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.”
22. The prosecution is thus required to establish that the appellant obtained something capable of being stolen; obtained it through a false pretence; and with the intention to defraud.
23. In the present appeal, it was the prosecution's case that the appellant presented himself together with his accomplices that he was the owner of the subject suit property South Ngariama No. 3346 measuring 3 acres and that he was in a position to sell and transfer the land. There was overwhelming proof that the appellant received money from PW1, PW2, PW3 and PW4 and I do find that the money was something that was capable of being stolen.
24. It is trite that it was upon the prosecution to prove the appellant's guilt beyond reasonable doubt having taken into account the defence fronted. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty.
25. Though the appellant denied ever committing any of the offenses and testified that all the witnesses lied in their testimonies, I note that therePW1-PW9 all saw him at the lawyer's office, saw him receiving the money and signing the sale agreement. The witnesses who identified him, PW1 and PW2 had seen and interacted with him and were able to positively identify the appellant before the arrest by recognition. The prosecution was able to establish that to the minds of PW1-PW9, the appellant was the registered land owner by the name Moses Muchira Kabuthia.
26. All the witnesses were consistent that the appellant was the one who posed as the land owner and signed the agreement as Moses Muchira. The witnesses also saw him pocketing the money received from the buyers and later signing transfer forms. The witnesses were consistent that the appellant's wife would collect the money, and the appellant would pocket it.



27. Section 312 of the [Penal Code](#) defines false pretence as: -

“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”

28. To prove the offence of obtaining by false pretence, the accused must by a false pretence, with intent to defraud, obtain something of value capable of being stolen from another person. The prosecution must prove the false pretence together with a fraudulent intention in obtaining the property of the person cheated.

29. I do note that the appellant’s ID number appeared in the sale agreements. I do agree with the trial court that the appellant had the intention to defraud the buyers as he was always aware that the land belonged to someone else and he was not in a position to sell it and transfer title to the buyers. He was always fully aware that the name appearing in the statement was not his yet he proceeded to execute the agreement.

30. There was also on record expert evidence confirming that all the complainant’s signatures matched those in the sale agreements proving that the testimonies of PW1-9 were not false as testified by the appellant. PW11 also confirmed that the agreements were prepared and executed in his office where the appellant was always present.

31. There was evidence that the subject property belonged to a deceased person and his death certificate was produced as PEXH5. I am convinced that the appellant obtained money from PW1-PW4 under the false pretence that he could sell the suit property to them having represented himself as the land owner. I am also convinced that the appellant impersonated the deceased and presented himself as Moses Muchira Kibuthii, the true owner of the property so as to falsely obtain money from potential buyers.

32. I do find that the prosecution proved all the ingredients of the offence charged as captured in 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](#).”

33. The offence of personation under Section 382 of the [Penal Code](#) which states: -

“ 382. Personation in general

1. Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanor.
2. If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits



the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.”

34. It has already been found that the defence offered by the appellant in the lower court did not raise any doubt as to his guilt. The explanation given by the appellant was in my view not reasonable nor did it rebut the clear evidence adduced by the prosecution. He claimed that he was not at the lawyer’s office on 30/7/2018 yet numerous people actually saw him there. He testified that he did not participate in the transaction yet his ID number appeared in all the four sale agreements produced in court. PW1-PW9 testified that the appellant would always go the lawyer’s office where he would pose as the land owner, sign the sale agreements and receive the money. The appellant’s denial was a sham.
35. Further, the appellant was positively identified by recognition by PW1 and PW2. PW1-PW9 identified him as the person who posed as the land owner. The appellant also confirmed that the lawyer was well known to him. The defense as fronted did not cast doubt on the prosecution’s case. I am clear to my mind that the appellant along with others was part of a scheme to lure buyers into purchasing land that belonged to a deceased person by posing as the land owner and he never refunded any of the funds received.
36. After weighing the explanation offered by the appellant and the prosecution evidence, I find that the prosecution evidence is truthful, credible and probable as opposed to the highly improbable defence offered by the appellant. The appellants defence did not raise any reasonable doubts on the prosecution case.
37. Having considered the circumstances of this case, the prosecution evidence, and the defence offered by the appellant, I am persuaded that the conviction was justifiable. The explanation offered by the appellant in my view does not cast reasonable doubt on the prosecution case.
38. As regards grounds of the appeal, though the appellant claimed that he was forced to proceed with the hearing when unwell, the records reflect that the medical documents he showed the court did not reflect that the appellant would need further medication after his last visit at Kenyatta Hospital, and that the appellant never raised the issue of ailment before the case was confirmed for hearing thus the same was an afterthought to delay the hearing.
39. Further, though the appellant submitted that he was denied a chance to re-examine the witnesses, I do note that he did not give sufficient reason why the same was necessary, noting that the right to recall the witnesses was not absolute, this ground fails.
40. Turning to the issue of sentence, the principles upon which an appellate court may interfere with the sentence imposed by a trial court are well known. It has been held that a sentence must in the end depend upon the facts of its own particular case and the appellate court shall not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factor, acted on a wrong principle or his sentence is manifestly excessive in the circumstances of the case (See *Ogulo s/o Owuora v Regina* [1954] 21 EACA 270, *Wanjema v Republic* [1971] EA 599 and *Griffin v Republic* [1981] KLR 121).
41. The appellant was sentenced to serve 2 years imprisonment per count on counts 1-4, and 1-year imprisonment per count on counts 5-9 running consecutively and cumulating to 11 years.
42. Obtaining money by false pretence attracts a maximum sentence of 3 years under section 313 of the *Penal Code*. Although sentences are intended, inter alia, to punish an offender for his wrongdoing, they also aim to rehabilitate offenders to renounce their criminal tendencies and become law-abiding citizens. The appellant had no previous record; however, he defrauded many people in his scheme,



remained apologetic, and was facing similar charges in another matter. Taking into consideration the pre-sentencing report, I have no doubt that the sentence imposed by the trial court, in this case, was lawful and commensurate to the offense.

43. For the offence of personation under Section 382(1) of the [Penal Code](#), a person who is found guilty of this offence is guilty of a misdemeanor. Under section 36 of the [Penal Code](#), the general punishment is for misdemeanour is a maximum term of 2 years' imprisonment with a fine or both. Under section 382(2), 'If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.'
44. The facts of impersonation in this case did not fall under section 382(2). The trial court imposed a one-year imprisonment term for misdemeanors without an option of a fine. I therefore quash it and substitute with a fine of Kshs. 500,000.00 or in default, the Appellant to serve imprisonment for 6 months for each count of counts 5-9 consecutively.
45. The sentence shall take effect from the date of the appellant's conviction.

JUDGEMENT DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF MAY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of Karuga for the Appellant and Mamba for the Respondent. Siele/Mark (Court Assistants).

