



REPUBLIC OF KENYA



KENYA LAW
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**Okemere v Republic (Criminal Appeal E040 of 2025)
[2025] KEHC 11218 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E040 OF 2025
DR KAVEDZA, J
JULY 30, 2025**

BETWEEN

RICHARD JUMA OKEMERE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. C. Njagi (PM) on 24th February 2022 at Kibera Chief Magistrate's Court, Sexual offence case No. E083 of 2021 Republic vs Richard Juma Okemere)

JUDGMENT

1. The Appellant was charged and, after a full trial, convicted by the Subordinate Court of the offense of obtaining money by false pretense contrary to Section 313 of the [Penal Code](#). The particulars were that on the diverse dates between November 2019 and 20th July within Nairobi County, with the intent to defraud jointly with another, before the court obtained Kshs. 500,000/= from Leonard Etyang Okemer by falsely pretending that you were in a position to secure enlistment with the Kenya Defence Forces for the said Leonard Etyang Okemer, a fact he knew to be false. He was sentenced to pay a fine of Kshs. 100,000 in default to serve twelve (12) months imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he 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 upon him.
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 analyze and re-evaluate the evidence presented before the trial court and come to its conclusion on the evidence, without overlooking the trial court's findings, but bearing in mind that it did not see the witnesses testify.



4. The prosecution called four witnesses to support their case. PW1 testified that in November 2019, he received a telephone call from the appellant, his uncle, who informed him that his wife was a deputy brigadier in the Kenya Army and could assist him in securing employment. Acting on this representation, PW1 raised and paid Kshs. 10,000 as requested, followed by a further demand of Kshs. 100,000. The appellant sent both his wife and mother to collect the money at PW1's home. PW1 secured a loan of Kshs. 15,000 from a shylock, using his title deed as security.
5. Over time, he remitted a total of approximately Kshs. 500,000 to the appellant and his wife. Upon realising he had been defrauded, he lodged a complaint at Kabete Police Station. The appellant was later arrested at the Golden Tulip Hotel with the assistance of a police officer. PW1 confirmed that although the appellant's wife had since been convicted, he had neither been refunded nor offered the promised employment. He reiterated that the appellant is well known to him as his uncle and that they previously had a cordial relationship.
6. PW2 stated that the appellant resided in the same plot as one Lucy, who introduced herself as an employee of the Kenya Defence Forces and indicated that she could assist in recruitment. Lucy demanded Kshs. 500,000 for the recruitment of PW2's relative, which PW2 paid. Further monetary demands followed, prompting PW2 to report the matter. She confirmed that Lucy was the appellant's wife and that she personally handed the money to the appellant. She concluded by asserting that both the appellant and his wife should refund her money.
7. PW3, Tophister Olele, testified that he knew the appellant as his in-law. The appellant approached him for money, promising to secure employment for one Etyang. He visited PW3's home with his wife Lucy, whereupon PW3 gave them Kshs. 55,000. During the COVID-19 period, a further Kshs. 8,500 was sent to Lucy. PW3 narrated that the appellant once called at midnight claiming that his wife had delivered three children, two of whom died, and later falsely reported the death of his wife. By that time, PW3 had sent Kshs. 500,000. No employment was forthcoming, and no refund was received.
8. PW4 corroborated the testimonies of PW1, PW2, and PW3. He further stated that upon interrogating the appellant and making inquiries with neighbours, it was confirmed that the appellant and Lucy cohabited as husband and wife.
9. In his defence, the appellant denied obtaining money from Thomas or Etyang, though he confirmed they are members of the same clan. He argued that no M-Pesa records linked him to any transaction and insisted he never received money from the sale of land or Leonard, attributing all dealings to one Lucy Mutitu. He acknowledged knowing Lucy, who had been charged and convicted, but denied being married to her, describing her only as a friend introduced by his brother. He alleged Lucy defrauded him of Kshs. 200,000 under the pretext of helping his brother join the KDF, and later heard she had died.
10. DW2, Kizito Juma Okemere, the appellant's younger brother, testified that he met Lucy at Country Bus Station, where she claimed to be training with the KDF and offered to help him. After confirming her identity with the appellant, Richard allegedly gave Lucy Kshs. 250,000. DW2 stated that Lucy later received another Kshs. 250,000 from Richard in his absence. He recounted an incident at Leonard's home, where Lucy appeared familiar with Leonard and his family. During cross-examination, DW2 claimed the complainants were motivated by a land dispute, as they believed the land belonged to them.
11. The appellant was convicted accordingly.



12. This court has re-evaluated the facts of this case. It has also re-evaluated the rival submissions made by parties to this appeal. 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.”
13. The prosecution was required to prove that the appellant obtained something capable of being stolen. In this case, money was the subject of the charge, and there is no dispute that each of the complainants parted with substantial sums, either through cash or M-Pesa transfers. The complainants testified that the payments were made with the expectation of securing employment in the Kenya Defence Forces. This satisfies the first element, as money is property capable of being stolen under the [Penal Code](#).
14. The second element is whether the money was obtained through a false pretence. The prosecution evidence established that the appellant, either personally or through his associate Lucy, misrepresented to the complainants that she held a senior position in the Kenya Defence Forces and could secure employment for them or their relatives. This assertion was untrue. The complainants were deceived into parting with money based on this false representation, which they believed to be true.
15. The third element is whether the appellant acted with the intent to defraud. The totality of the evidence shows that the appellant knew no jobs were available and that neither he nor Lucy was in a position to secure employment. The false representation was deliberate, and the retention of the money without delivering on the promise confirms fraudulent intent.
16. The trial court considered the defence and found it to be a mere denial, unsupported by any credible evidence. The court found the testimony of the complainants consistent and corroborated. The assertion that there was no direct M-Pesa transaction to the appellant is insufficient to rebut the overwhelming evidence that he was directly involved. The totality of the evidence supports the finding that the offence of obtaining money by false pretences, contrary to section 313 of the [Penal Code](#), was proved beyond reasonable doubt.
17. The conviction of the trial court was proper and is affirmed.
18. Upon conviction, the appellant was sentenced to pay a fine of Kshs. 100,000 in default to serve 12 months imprisonment. In his appeal, the appellant submitted that the sentence was excessive in view of the offence.
19. Section 313 of the [Penal Code](#) provides for a maximum of three-year sentence for persons convicted of the offence the appellant was convicted of.
20. From the foregoing, the sentence imposed by the trial court was lawful. 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.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY 2025

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D. KAVEDZA

JUDGE



In the presence of:

Appellant Present

Mr. Shisani for the Appellant

Mr. Chebii h/b for Mutuma for the Respondent

Ms. Karimi Court Assistant.

