



REPUBLIC OF KENYA



**Wambui v Republic (Criminal Appeal E081 of 2025)  
[2025] KEHC 12171 (KLR) (28 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12171 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E081 OF 2025  
DR KAVEDZA, J  
AUGUST 28, 2025**

**BETWEEN**

**VINCENT SAMMY NDIRANGU WAMBUI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by Hon. C Njagi (P.M) on 23rd May 2025 at Kibera Chief Magistrate's Court Criminal Case No. 4142 of 2025 Republic vs Vincent Sammy Ndirangu Wambui & Christine Wanjiru Gikunju)*

**JUDGMENT**

1. The appellant was jointly charged and after a full trial convicted with another not before this court with two counts of offence: Count I obtaining money by false pretences contrary to section 313 of the Penal Code and Count II, making a false document contrary to section 357 (a) of the Penal Code. After a full trial, he was convicted and sentenced to pay a fine of Kshs. 5,000,000 in default to serve one and a half years imprisonment and two years' imprisonment respectively. The sentences are to run consecutively.
2. The appellant, aggrieved by both conviction and sentence, filed the present appeal through a petition dated 4<sup>th</sup> June 2025. He submits that the prosecution evidence, taken as a whole, was insufficient to sustain a conviction, and that the trial court erred by disregarding his defence. He further argues that the prosecution failed to call essential witnesses whose testimony would have been material to the just determination of the case. He also challenges the imposition of consecutive sentences as unlawful. On these grounds, he urges this Honourable Court to quash his conviction and set aside the sentence imposed."
3. 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.

4. The prosecution's case was as follows: PW1, Michael Githongo Gitahi, testified that he was introduced to the 1st accused, before the trial court Peninah alias Christine, by a person known as Mitchell. Peninah proposed a business deal involving a Local Purchase Order (LPO) from the Ministry of Roads and Transport for the supply of ball bearings for the Standard Gauge Railway project. Peninah stated she only had Kshs. 500,000 and needed an additional Kshs. 2.5 million to facilitate the order.
5. On 19th August 2015, PW1 deposited Kshs. 2.5 million into the account of Virash General Merchants, A/C No. XXXXXXXXXXXXX owned by the appellant. On 27th August 2015, an agreement was executed, and the 1st accused issued five post-dated cheques of Kshs. 840,000 each, drawn on KCB Sarit Centre branch, payable to Patmo Investments Limited.
6. Subsequently, Peninah indicated that goods had been delivered and produced delivery notes and invoices. She later requested a further Kshs. 3 million for another LPO. PW1 advanced Kshs. 2.5 million in cash and deposited another Kshs. 2.5 million into the same Virash account at Jamii Bora Bank. He was again shown delivery notes. Later, he was presented with an LPO valued at Kshs. 4.8 million, leading him to deposit Kshs. 1.78 million into the same account.
7. PW1 told the court that he later discovered that the LPOs and deliveries were not genuine. Peninah agreed to refund Kshs. 7,250,000 but failed to do so, prompting him to report the matter. He maintained that he dealt directly with Peninah, witnessed her writing the post-dated cheques, and executed agreements with her, including one at her advocate's office. PW1 maintained that the delivery notes originated from Datanomics, but he did not know the company's connection to Peninah. He confirmed that his dealings were with Peninah and not with Vincent Sammy Ndirangu (the appellant) or Mitchell. Mitchell, who introduced him to Peninah, remained at large.
8. PW2, Advocate Steven Mwaura Muhia, testified that he was instructed by the complainant to draft a joint venture agreement between PW1 and Peninah for the supply of ball bearings. On 26th August 2015, he received documents from Ndeda Advocates representing Peninah. He engrossed the agreement, which was signed by both parties, each producing their national identity cards, including one for Peninah under ID No. XXXXXXXXX. He produced the agreement and Peninah's ID copy. Later, PW1 informed him that he had been defrauded of Kshs. 7,280,000 and that Peninah had used a false identity. He discovered that Peninah was in fact Christine Wanjiru. He confirmed he never met the appellant and did not witness any forgery of stamps or LPOs by the 1st accused.
9. PW3, Corporal Kitayi, a document examiner, testified that on 1st July 2016 he received several questioned documents and specimen handwriting samples. He was tasked with comparing the disputed signatures and handwriting against known specimens. His analysis confirmed that the questioned signatures and handwriting matched those of Christine Wanjiru alias Peninah Njeri. He found that the stamp impressions on the disputed documents did not match the specimen from the Ministry of Roads, indicating they were made using different instruments. He produced his reports and exhibit memos.
10. PW4, Corporal Michael Kiprono, the investigating officer, confirmed the complainant's account of events and the payments made to Virash General Merchants owned by the appellant. His investigations established that Datanomics East Africa was owned by Christine Wanjiru Gikunja, also known as Peninah Njeri. He obtained confirmation from the Registrar of Persons that the true identity of the 1<sup>st</sup> accused was Christine Wanjiru Gikunja, holder of ID No. XXXXXXXXX.



11. PW5, Gabriel Ochieng, Assistant Director at the National Registration Bureau, testified that following a DCI request, he confirmed that ID No. XXXXXXXXX belonged to one Peninah Ndegwa Mutuku, while ID No. XXXXXXXXX was registered to Christine Wanjiru Gikunja. He explained the process of ID replacement.
12. At the close of the prosecution's case, the trial court found that a prima facie case had been established against the accused persons.
13. In her defence, the 1<sup>st</sup> accused testified that she neither received any money from the complainant, nor did she prepare any LPOs or stamps. She confirmed she was the director of Datanomics East Africa but denied knowing the complainant or Mitchell. She stated that in 2015 she was employed by Subaru Kenya and produced her employment contract. She claimed that her company's details had been misused in fraudulent dealings and denied any involvement with anyone known as Peninah Njeri.
14. The appellant, testified that in July 2015 he was introduced to Mitchell, who was supplying goods to the NYS. Interested, he entered into a contract to supply ball bearings. The said hMitchell requested 1,125 bearings at a cost of Kshs. 6,000 each. He delivered the goods to Ridgeways Mall as directed by Peninah, completed all deliveries, and was paid through his company's Jamii Bora Bank account for Virash General Merchants. He confirmed receiving Kshs. 2.5 million and Kshs. 1.78 million. He produced delivery books and his company registration certificate. He insisted that he dealt with Mitchell and not with the complainant or the 1st accused, whom he only met after the case commenced.
15. DW3, George Waweru Kimani, testified that he was subcontracted by Vincent to deliver bearings on 19th August 2015 to Mitchell. He told the court that he did not know the contents of the cartons he was delivering.
16. DW4, Emmanuel Karisa Kenga, a forensic document examiner, testified that he was instructed to examine documents containing signatures and handwriting attributed to Christine. He compared the questioned documents with known specimens and concluded that the signatures were different and bore no similarities. He prepared and produced his report, stating that in his analysis the disputed documents did not originate from Christine. He noted that his findings contradicted those of the prosecution's expert.
17. After the close of the defence, the appellant was convicted and sentenced accordingly.
18. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
19. In count I, 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.”
20. 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.



21. In the present case, the evidence shows that the complainant was induced to transfer Kshs. 2.5 million twice and an additional Kshs. 1.78 million into the appellant's bank account, held in the name of Virash General Merchants. The inducement was the representation that the funds were required to facilitate a government tender for the supply of ball bearings to the Ministry of Roads and Transport. Bank records produced by the prosecution confirmed that the money was received in the appellant's account. The appellant did not dispute that he indeed received the funds.
22. His defence was that he merely acted as a conduit on behalf of one "Mitchell," who allegedly instructed him to receive and disburse the money for the supply of goods. He further claimed that part of the money was handed over to Peninah, who was said to have facilitated the supply. However, the appellant failed to produce any documentary evidence of a contractual relationship between Mitchell and the complainant, or of any genuine supply of goods to the Ministry. He equally failed to call Mitchell as a witness. The explanation, therefore, remained bare and uncorroborated.
23. Section 111 of the *Evidence Act* is clear that when a fact is especially within the knowledge of an accused, the burden of proof as to such fact lies upon him. Having admitted that the money was received in his account, the appellant bore the duty of offering a reasonable and credible explanation of the transaction. His failure to do so justified the trial court's finding that he participated in a fraudulent scheme.
24. From the record, the evidence against the appellant was largely circumstantial. The Court of Appeal in *Sawe v Republic* [2003] KLR 364 restated that for a conviction to be founded on circumstantial evidence, the circumstances must form a complete chain pointing unerringly to the accused's guilt, and must exclude any reasonable hypothesis of innocence. Similarly, in *Musili Tulo v Republic* [2014] eKLR, the Court held that such evidence must irresistibly lead to the inference that the accused, and no one else, committed the offence.
25. In this case, the direct transfer of funds into the appellant's company account, his role in disbursing those funds, his failure to provide a legitimate explanation, and the lack of evidence of any genuine supply or contract, together created a chain of circumstances consistent only with his involvement in obtaining money by false pretences. The assertion that he was a mere intermediary collapses under scrutiny, for the complainant's funds were channelled through his account without lawful justification, and he benefitted directly from the proceeds.
26. In this case, the appellant and his associates represented that there existed a genuine government contract requiring urgent financial facilitation. The complainant was thereby induced to part with his money, which the appellant received. It is immaterial that the appellant did not personally make the initial representation to the complainant. By knowingly receiving the proceeds of the fraudulent scheme into his account and disbursing them without proof of any legitimate transaction, he became the link in the chain of deception. The law is clear that one who knowingly facilitates the fraudulent transfer of money, with intent to defraud, is culpable under section 313.
27. In the premises, the circumstantial evidence adduced was cogent, credible, and sufficient to sustain the conviction in count I. The prosecution established beyond reasonable doubt that the appellant knowingly received and dealt with the complainant's money in furtherance of a false pretence, and that his conduct was not consistent with that of an innocent agent. The conviction for obtaining money by false pretences was therefore proper and is upheld.



28. In count II, the appellant was charged with making a false document contrary to section 357 (a) of the Penal Code. Section 357(a) of the Penal Code criminalises the making of a false document without authority. It provides that:
- “ Any person who, without lawful authority or excuse, makes, signs or executes for or in the name or on account of another person, any document or writing, knowing that he is not authorised so to do, is guilty of an offence.”
29. To establish an offence under this section, the prosecution must prove: That the accused made, signed, or executed a document; that the document was false or unauthorised; that the accused knew he lacked authority to make it; and that he acted with the requisite fraudulent or dishonest intent.
30. In the present case, the prosecution alleged that the appellant participated in the preparation of a Local Purchase Order (LPO) No. 151298 with intent to defraud and without lawful authority purporting to be a genuine Local Purchase Order issued by the Ministry of Roads and Transport. This LPO was said to have formed part of the inducement through which the complainant was deceived into parting with funds. However, the evidential record reveals significant gaps in the prosecution case.
31. From the record, the LPO which formed the basis of the charge was never produced by the prosecution. The investigating officer, who was expected to tender the document as an exhibit, did not testify. Without the production of the document, the court could not assess its form, content, or authenticity. Failure to produce it leaves the court with nothing but bare allegations.
32. In the premises, the trial court erred in concluding that the LPO was a forgery despite it not being on record. A court cannot make such a finding when it has not been accorded the opportunity to examine the document in issue. Such a finding amounts to speculation rather than a reasoned judicial determination based on evidence. In *Bukenya v Uganda* [1972] EA 549, the court held that where the prosecution fails to call crucial witnesses or produce material evidence, an adverse inference may be drawn that the evidence would have been unfavourable to the prosecution.
33. On these facts, it is clear that the conviction on this count was improper. The essential ingredients of the offence under section 357(a) were not proved beyond reasonable doubt. The prosecution neither established the existence of the alleged forged LPO in court nor connected it to the appellant.
34. In the absence of the document, no reasonable tribunal could safely find that the appellant made or participated in making of a false document without authority. Accordingly, the conviction under section 357(a) was unsafe and is set aside.
35. In count I, the appellant was sentenced to pay a fine of Kshs. 5,000,000 in default to serve one and a half years imprisonment. During sentencing, the court considered the appellant’s mitigation, that he was a first offender and exercised discretion.
36. Section 28 of the Penal Code which prescribes the sentences to be imposed in default of payment of different amounts of fine makes it clear that unless there is a provision in any law to the contrary, the maximum sentence that any court can impose in default of payment of fines exceeding Kshs. 50,000 is twelve months imprisonment. The default sentence of one and a half years imprisonment ran afoul of Section 28 of the Penal Code for the reason stated above. The trial court should have followed the law and ought to have imposed a default sentence of 12 months imprisonment in lieu of payment of the fine imposed.
37. Consequently, it is my finding that the appellant’s appeal is partially allowed in the following terms:



- i. The sentence in Count I of payment of a fine of Kshs.5,000,000 in default to serve one and a half years imprisonment is hereby substituted with a sentence of the payment of a fine of Kshs.5,000,000 in default to serve twelve (12) months imprisonment.
- ii. The conviction and sentence imposed in Count II, is hereby quashed and set aside.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY IN THE ABSENCE OF THE PARTIES  
THIS 28<sup>TH</sup> DAY OF AUGUST 2025**

**D. KAVEDZA**

**JUDGE**

