



REPUBLIC OF KENYA



**Mithika v Director of Public Prosecutions (Criminal Appeal
E018 of 2024) [2024] KEHC 6395 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E018 OF 2024
TW CHERERE, J
MAY 30, 2024**

BETWEEN

JOHN IRINGO MITHIKA APPELLANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

*(An appeal from the conviction and sentence in Tigania Criminal Case No.
E566 of 2021 by Hon. J.Macharia (SPM) on 07th September, 2023)*

JUDGMENT

1. John Iringo Mithika (Appellant) was charged with obtaining KES. 200,000/- by false pretences contrary to section 312 as read with Section 313 of the Penal Code Cap 63 Laws of Kenya (the Act).

Prosecution case

2. Mercy Kinya, the complainant stated that Appellant offered to sell to him plot No. 6071 at Karama shopping centre for KES. 230,000/-. Subsequently, they executed an undated sale agreement PEXH. 1 before Ayub Anampiu Advocate and she paid Appellant a sum of KES. 200,000/- and agreed to pay the balance of KES. 30,000/- in April, 2020. Complainant stated that she later realized that the plot did not belong to the Appellant and reported the matter to police.
3. Amos Kithinji stated that he was present when complainant and Appellant executed the sale agreement and witnesses the payment of KES. 200,000/- by Complainant to the Appellant.

Defence case

4. In their sworn defence, Appellant conceded selling plot No. 6071 at Karama to the complainant and receiving KES. 200,000/- from her. He stated that he only came to realise that his wife had transferred the plot from his name to her name after the sale. He offered to refund the sale price.



Conviction and sentence

5. The trial court having heard both the prosecution and defence cases rejected the defence, convicted Appellant and sentenced him to pay a fine of KES. 80,000/- or serve a one-year imprisonment term.

The Appeal

6. The conviction and sentences provoked this appeal in which Appellant mainly contends that the prosecution case was not proved.

Analysis and Determination

7. On first appeal from a conviction by a judge or magistrate, the appellant is entitled to have the appellate court's own consideration and view of the evidence as a whole and its own decision thereon. The court has a duty to rehear the case and reconsider the material before the judge or magistrate with such materials as it may have decided to admit. (See Kariuki Karanja Vs Republic [1986] KLR 190).
8. I have considered the appeal in the light of the evidence on record, the grounds of appeal and submissions filed by the Appellant and oral submissions by Ms. Rotich for the DPP.
9. The offence of obtaining by false pretences has seven possible ingredients which have to be proved beyond doubt before an accused person is convicted. They are (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. (See Amugo v Republic High Court Criminal Appeal No 320 of 1980).
10. In Gerald Ndoho Munjuga vs Republic [2016] eKLR Mativo J (as he then was) cited the Supreme Court Of Nigeria. Suit No. SC.41/2003 Dr Edwin U. Onwudiwe vs Federal Republic of Nigeria where it was held that for an offence of false pretence to be proved, the prosecution had to demonstrate that there was pretence, the pretence emanated from the accused person, that it was false, that the accused person knew it was false or did not believe in its truth, that there was an intention to defraud, that the thing was something that was capable of being stolen and that the accused person induced the owner to transfer his whole interest in the property.
11. The offence of obtaining by false pretences means knowingly obtaining another person's property by means of a misrepresentation of fact with intent to defraud.
12. Appellant does not deny that he offered to sell plot No. 6071 at Karama to complainant and received KES. 200,000/- from her. Appellant concedes that he could not transfer because it was not in his name. Appellant did not demonstrate that the plot was at any one time registered in his name.
13. From the foregoing, I find as did the trial magistrate that Appellant did not sold the plot No. 6071 at Karama fraudulently and with intent to defraud obtained from the complainant KES. 200,000/- well knowing that he did not have a good title to the plot.
14. From the totality of the evidence tendered against the Appellant, I find that his defence did not raise any reasonable doubt and he was rightly convicted and sentenced.
15. In the end, this appeal is found to have no merit. The conviction and sentence imposed on the Appellant are upheld.

DELIVERED AT MERU THIS 30TH DAY OF MAY 2024



WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Appellant - Present in person

For Appellant - Ms. Asuma Advocate

For DPP - Ms. Rotich (PC-1)

