



**Mwithimbu v Republic (Criminal Appeal E150 of 2021)
[2022] KEHC 11456 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E150 OF 2021
TW CHERERE, J
MAY 26, 2022**

BETWEEN

PETER THURANIRA MWITHIMBU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against sentence in Meru Law Court in criminal No. 1710
of 2017 by Hon. E. MBICHA PM on delivered on 2nd September 2021)*

JUDGMENT

1. Peter Thuranira Mwithimbu (appellant) was charged with two counts of obtaining money by false pretences contrary to section 312 as read with section 313 of the *Penal Code*.
2. The particulars of the 1st count are that; -

On the May 31, 2017 at Kaimenyi Kithinji & Co Advocates office in Meru township Imenti North Sub-County within Meru County, with the intent to defraud jointly obtained Kshs 2,000,000 from Stephen Marangu Ringera by falsely pretending that you were in a position to sell him a parcel of land measuring 10 acres to be exercised from land parcel 614 Ruiriri/Rwarera Adjudication Section- Buuri District to be co-owned by him and Stephen Marangu Ringera a fact you knew to be false.

3. The particulars of the 2nd count are that; -

On June 28, 2017 at Kaimenyi Kithinji & Co. Advocates office in Meru township Imenti North Sub-County within Meru County, with the intent to defraud jointly obtained Kshs. 500,000 from Christopher Kimathi Kiara by falsely pretending that you were in a position to sell him a parcel of land measuring 10 acres to be exercised from land parcel 614 Ruiriri/



Rwarera Adjudication Section- Buuri District to be co-owned by him and Stephen Marangu Ringera a fact you knew to be false.

4. Appellant was tried, found guilty on both counts and was sentenced to serve 2 ½ years' imprisonment in each count with the sentences running concurrently

The Appeal

5. Dissatisfied with the sentence, appellant lodged this appeal on the ground that the learned trial magistrate failed to apply section 333(2) of the *Criminal Procedure Code* which requires that the period spent in custody be considered.

6. Section 333(2) of the *Criminal Procedure Code* which provides: -

Warrant in case of sentence of imprisonment

- (2) Subject to the provisions of section 38 of the *Penal Code* (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this *Code*.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

7. Appellant was arrested and charged on September 16, 2017 and was released on bond 4 days later on September 20, 2017. The court record reveals that appellant remained on bond throughout the trial but had been detained in custody in another matter pending at Nkubu Court.
8. From the foregoing, I find that the trial magistrate acted lawful as he had no obligation to consider the time that the appellant was detained in custody in another matter.
9. In the end, I find that this appeal has no merit and it is dismissed.

DELIVERED AT MERU THIS 26TH DAY OF MAY 2022

WAMAE TW CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Appellant - Present in person

For State - Ms. Mwaniki (PPC)

