



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE APPEAL NO.81 OF 2017

SAMUEL MUNYI MWANIKI APPELLANT

Versus

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence by Hon. L Mutai – Chief Magistrate dated 7th June 2017 in Nanyuki Chief Magistrate Court Criminal Case No. 649 of 2017)

JUDGMENT

1. **SAMUEL MUNYI MWANIKI pleaded guilty**, before Nanyuki Chief Magistrate's Court, for the offence of obtaining by false pretences **Contrary to Section 313 of the Penal Code**. He was sentenced to serve imprisonment for 2 ½ years. He has filed this appeal against that sentence.
2. His submissions in support of his appeal are mitigations. He submitted that he is the sole bread winner of his family, that he is now reformed and remorseful of his actions; and that he has obtained counselling at prison.
3. The respondent represented by the Principal Prosecution Counsel Mr Tanui submitted that the sentence provided under Section 313 of the Penal Code is 3 years. That accordingly the sentence of 2 ½ years was excessive.
4. The facts narrated by the prosecution were that the appellant was contracted by Karanja Kagiri to assist in construction of Laikipia airbase. To that end the appellant was permitted to collect supplies for that construction from Ndachi Company hardware in Nanyuki. The appellant collect from that hardware shop items in excess than that which was required for the construction. He collect the following items: vibrator machine, turpentine, paint, brushes; all items valued at Ksh. 86,430.
5. The appellant was a first time offender.
6. The fact the appellant was a first offender the sentence meted to him, of 2 ½ years imprisonment was excessive since the maximum sentence under Section 313 is 3 years imprisonment. It is because of that finding that this court can interfere with that trial court's sentence: see the case **SUSAN ASIYO – VS- REPUBLIC [2016] eKLR**
7. The judgment of this court is as follows:
 - a. **The trial court's sentence of Samuel Munyi Mwaniki is hereby set aside.**
 - b. **This court sentences Samuel Munyi Mwaniki to serve imprisonment for the period so far served and in addition he shall serve 6 (six) months under probation supervised by Laikipia East sub county Probation office.**
 - c. **In that regard I order the appellant to be set free unless he is otherwise lawfully held.**

Dated and Delivered at Nanyuki this 18th April 2018

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant SamuelMunyiMwaniki.....

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE