



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.91 OF 2012

CECILIA LELEITO.....APPELLANT

VERSUS

REPUBLIC OF KENYA.....RESPONDENT

(Being an appeal from original conviction and sentence in Narok C.M.CR.C.NO.206 of 2012 by Hon. C. A. Nyakundi, S.R.M. dated 25th April, 2012)

JUDGMENT

INTRODUCTION

1. The appellant was charged with the offence of **Obtaining Money by False Pretence** contrary to **Section 313** of the **Penal Code**.
2. Brief particulars of the charge are that on the 21st January, 2012 at Ololunga Trading Centre, the Appellant approached Mr. Patrick Njoroge Munene (P.W.1) and pretended that she was in possession of a motor vehicle registration No.KAM 427M which she had intentions to sell.
3. The appellant agreed to sell the motor vehicle to P.W.1 and obtained the first instalment of Kshs.14,175/= from P.W.1 but was unable to transfer the logbook to the complainant nor was she able to refund the monies.
4. The appellant was convicted on her one plea of guilty and was sentenced to a term of four (4) years imprisonment.
5. The appellant being aggrieved by the decision of Hon. C.A. Nyakundi delivered on 25th April, 2012 preferred this appeal and in her Petition of Appeal listed the following grounds of appeal:
 - i) That he pleaded guilty.
 - ii) That he had never been to court of law nor being arrested and therefore not aware of the court proceedings thus pleaded guilty unknowingly of the consequences and I was not warned
 - iii) That the sentence imposed is excessively for a first offender.
 - iv) That she is a single mother of five children and two are disabled (in a Children Home in Eldoret
 - v) That the trial magistrate failed to consider her mitigation before convicting her.
 - vi) That she is seeking a retrial as she feels that she had no chance to cross-examine the witnesses which is her right (she had no knowledge of the same by then)
 - vii) That she wishes to be present during the hearing of her appeal.

6. At the hearing of the Appeal, the appellant and Prosecuting Counsel for the State, Mr. Marete both made oral submissions
7. The appellant submitted that she was only appealing against sentence which she contended was harsh and excessive and despite her mitigation she was not given an option of a fine.
8. Her mitigation was that she was a widow with five (5) children who were now resident at the Eldoret Children's Home.
9. The appellant prayed for the court's leniency.
10. Counsel for the State submitted that the appellant had been convicted on her own plea of guilty and he urged the court not to interfere with the conviction.
11. As for the sentence, counsel for the State conceded that the sentence was not legal as **Section 313** of the **Penal Code** provided for a maximum term of three (3) years.

ISSUES FOR DETERMINATION

12. After hearing the submissions of both parties, this court finds only one issue for determination, which is whether the sentence imposed is legal.

ANALYSIS

13. The appellant having been convicted on her own plea of guilty, this court concurs with the submissions of Counsel for the State, that her appeal can only be limited to the sentence imposed.
14. This court has had the occasion to read the provision of **Section 313** of the **Penal Code** which provides as set down hereunder:

“Section 313. Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induce any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanor and is liable and is liable to imprisonment for three years.

15. From the above provision, it is clear that the maximum sentence that can be imposed is three (3) years.
16. This court, therefore, finds reason to interfere with the sentence imposed as the trial magistrate exceeded his jurisdiction, thus making the sentence illegal.

FINDINGS

17. Taking into consideration the appellant's mitigation, that she was a first offender, this court finds that the sentence imposed is not only excessive but also illegal.

CONCLUSION:

18. The appeal is found to have merit only on the issue of sentence and the same is hereby allowed.
19. The conviction is upheld but the sentence is hereby set aside.
20. The sentence is hereby commuted to the term already served.
21. The appellant to be set at liberty forthwith unless, otherwise lawfully held.

It is so ordered.

Dated, Signed and Delivered at Nakuru this 6th day of December, 2013.

MSHILA

JUDGE