



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL APPEAL 489 OF 2007

JOHN NJOGU NGUGIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction in Criminal Case No.429 of 2006 of the Chief Magistrate's Court at Nairobi by M. Muigai - Senior Principal Magistrate and sentence by T. Ngugi – Senior Resident Magistrate)

JUDGEMENT

The appellant was charged with two counts of obtaining money by false pretences contrary to section 313 of the Penal Code. In count 1 it is alleged that on 21st day of October 2005 with intent to defraud the appellant obtained Kshs.20,000/= from Stephen Kariuki by falsely pretending that he was in a position to sell a motor vehicle Toyota Shark to the said Stephen Kariuki. In count 2 it is alleged that on the 1st day of November 2005 with intent to defraud, the appellant obtained Kshs.400,000/= from the same Stephen Kariuki by falsely pretending that he would sell him a motor vehicle Toyota Shark a fact which he knew was false. After full trial, he was convicted in both counts and sentenced to serve 2 years imprisonment. The sentence was ordered to run concurrently. The appellant is aggrieved by the decision of the trial court hence this appeal.

The complainant gave evidence as PW1 and confirmed that he gave the two amounts in count 1 and count 2 to the appellant who was contending to sell him a Toyota Shark. But after giving the money the appellant started giving promise and could not deliver the motor vehicle as agreed. He also produced documents showing a cash deposit of Kshs.400,000/=, a cash receipt and a handwritten agreement signed between him and the appellant. He also produced a copy of a bank cheque showing payment made to the appellant.

PW3 a document examiner confirmed that the signatures and the specimen handwriting on the agreement were that of the appellant and complainant.

The appellant himself confirmed that he received the sums mentioned in the charge sheet from the complainant. He also confirmed to court that he was ready and willing to return the monies to the complainant but in the end he failed to perform his part of bargain. It therefore means that the appellant received the sums mentioned in the charge sheet and did not deliver the motor vehicle which he

undertook to sell to the complainant. It is therefore my decision that the appellant was convicted on sound and clear evidence adduced by the prosecution and which himself confirmed. In essence the evidence on record proved the guilt of the appellant beyond reasonable doubt the trial court properly directed its mind to the evidence produced by the prosecution and the defence of the appellant and came to the correct conclusion. There is no error or misdirection committed by the trial court in convicting the appellant. Consequently it is my decision that there is no merit in the appeal against conviction. The appeal against conviction is dismissed.

On sentence, I wish to hear any mitigation from the appellant.

Dated, signed and delivered at Nairobi this 14th day of March 2012.

M. WARSAME

JUDGE

14.3.2012

Warsame J

Kosgei – court clerk

Appellant in person

Court: Judgment read in open court in the presence of the appellant.

M. WARSAME

JUDGE

Appellant: I served one month in prison and now I have been in custody for 3 weeks. I pray that you give me an option of fine.

Court: having taken into consideration the mitigation of the appellant, I think the sentence of 2 years imprisonment without the option of fine is manifestly excessive. Consequently I give an option of fine of Kshs.25,000/= in each count, meaning that the appellant shall pay a fine of Kshs.50,000/= in default to serve 2 years imprisonment. Orders accordingly.

M. WARSAME

JUDGE

14.3.2012