



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Criminal Appeal 653 of 2010

GEORGE MBICHIRE APPELLANT

VERSUS

REPUBLIC RESPONDNET

JUDGMENT

The appellant was convicted of one count of obtaining money by false pretences contrary to section 313 of the Penal Code and two counts of uttering a false document contrary to section 353 of the Penal Code. On each of those counts he was sentenced to serve 3 years imprisonment which were ordered to run concurrently. This is an appeal arising from the said conviction and sentence.

The learned counsel for the Republic concedes this appeal and I do not therefore deem it necessary to delve any deeper into the evidence adduced before the learned trial magistrate. I must however go on record that I, with respect, agree with both the learned Counsel for the appellant and for the Republic that these charges were never proved against the appellant. Indeed, going by the evidence adduced, one would wonder why the appellant was ever charged at all. If anything, this was clearly a civil dispute, if at all, which should have never been registered to compromise the freedom of the appellant.

The appellant is said to have been a director of a company known as Buffet Park Limited. He obtained a loan from Stanbic bank upon a guarantee by the company but which was disowned by the other directors of the company. The loan was intended to buy a truck. When the issue of guarantee was raised the bank repossessed the truck and sold it. As a commitment, the appellant had paid Kshs. 1.6 million as a deposit. Upon the sale of the truck the bank recovered all the money that it had advanced to the appellant. That recovery and satisfaction of the entire sum, released the appellant from any obligation to Stanbic Bank. The issue of obtaining by false pretences therefore could not arise.

There was also evidence that signatures in the documents presented were not the same, and since the appellant had been acquitted of the offences relating to forgery, those relating to uttering false documents

could not be sustained. With respect therefore, the charges against the appellant cannot be sustained. It follows the convictions are hereby quashed and sentences set aside.

I note that the appellant is out on bail pending the determination of this appeal. I order that the terms of his release on bail are also vacated. He is declared free forthwith unless otherwise held.

Orders accordingly.

Dated and delivered at Nairobi this 12th day of June, 2012.

A. MBOGHOLI MSAGHA
JUDGE