



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 106 of 2012

TOM OKOTH ANYUMBAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and sentence in the Criminal case No. 3648 of 2011 of the Chief Magistrate's Court at Mombasa – J. GANDANI – SPM)

JUDGMENT

The Accused **JOHN OKOTH ANYUMBA** pleaded guilty on the charge of obtaining money by false pretence contrary to Section 313 of the Penal Code.

The particulars of which were that:

“On the 24th day of November, 2011 at Canon Towers in Mombasa within the Coast Province with intent to defraud obtained from JOHN OGONDA the sum of Ksh. 210,000/= in cash, by falsely pretending that he was in a position to provide a truck for a container for transportation to Malaba, a fact he knew not to be true”.

Section 313 of the penal code provides:

“Any person who by any false pretence and with intent to defraud, obtaining from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years”.

In the present case the Accused pleaded guilty to the charge. He did not waste Judicial time. He was treated as a first offender. The sentence of four (4) years when the law provides for a maximum of three years is clearly illegal.

The imprisonment for a term of 4 years is hereby reduced to two (2) years.

Dated, delivered and signed in open Court at Mombasa this **31st** day of **October, 2012**.

.....

M.MUYA

JUDGE

In the presence of:-

Mr. Gioche for the state

Court clerk Musundi

Accused