



REPUBLIC OF KENYA

High Court at Kisumu

Criminal Appeal 86 of 2012

SAMSON OMIRE BARRACK.....APPELLANT

VERSUS

REPUBLICRESPONDENT

**From original conviction and sentence in Criminal Case number 569 of 2012 of the
Principal Magistrate's Court at Siaya – Mr. J. N. Sani Esq)**

JUDGMENT

The appellant was charged with the offence of “obtaining money by false pretences contrary to Section 313 of the penal code.

The particulars of the offence are that on the 7th day January 2012 at 0900am at Malanga Sub location Ulughulu village in Gem District within Nyanza Province with intent to defraud obtained from Joyce Akumu Okumu Kshs. 39,000 by falsely pretending he was going to Kisumu K P L C Officers to pay for her as connection fee for electricity”.

The appellant on his own plea of guilt was convicted and sentence to one year imprisonment.

He filed four (4) grounds of appeal. During the hearing however Mr. Odeny his counsel decided to withdraw the grounds on conviction but dwelt mainly on sentence. He implored this court to consider the sentence of one year meted against the appellant to be excessive in the circumstances.

The State on the other hand supported the conviction arguing that the same was within the law and not excessive.

Sentencing as is the case is usually discretionary provided that it is done within the parameters of the law. The offence against the appellant attracts a maximum period of three (3) years.

In this case the appellant was sentence to one (1) year imprisonment. The circumstance which were not disputed by the appellant were clear and straight forward. The appellant deliberately and knowingly took the sum of Kshs. 39,000 from the complainant and instead of paying the electricity connection charges on her behalf he converted the same for his own use.

I note further that despite all this he has not made any practical efforts to pay back the money. I do not see any good faith on his part. I dare to add that it was not impossible for the appellant to have taken more money from the complainant if the occasion would have arisen.

In the premises I do find the one year jail term to be adequate and sufficient. The same is not

excessive in anyway to require my intervention. The appeal is otherwise dismissed.

Dated, signed and delivered at Kisumu this 26th day of November 2012

**H. K. CHEMITEI
JUDGE**

In the presence of:

Meroka for State Counsel

Mr. Odeny for Appellant

HKC/aao