

REPUBLIC OF KENYA

High Court at Malindi

Criminal Appeal 104 of 2011

OMAR JUMA ATHMANAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 945 of 2011 of the Senior Resident Magistrate's Court at Malindi before Hon. A. M. Obura – SRM)

JUDGMENT

1. The appellant was convicted on his own guilty of plea for the offence of obtaining by false pretences contrary to section 313 of the Penal Code. The particulars of the charge are that:

“On the 27th day of February, 2008 at Maweni 'B' village in Kilifi District within Coast Province with intent to defraud obtained from Catherine Katana Nuri the sum of kshs. 24,000/= by falsely pretending to sell her a plot.”

2. Through his advocate Mr. Odhiambo, he has appealed to this court on sentence alone. It would appear that upon conviction the appellant successfully sought time to refund the complainant's money, but he failed to do so. Mr. Odhiambo has urged the court to note that the appellant was a first offender and had no opportunity to make the refund while in prison. He prayed that the sentence be reduced.

3. Mr. Kemo opposed the appeal citing the apparent unwillingness by the appellant to refund the complainant's money or give her an alternative plot.

4. Having considered all the foregoing, I am of the view that the sentence was not proportional to the offence as it leans towards the higher side considering the amount of money involved and the fact that the offence is a misdemeanor.

5. Accordingly, I will allow the appeal, and reduce the sentence to the period already served. The appellant will be set at liberty unless otherwise lawfully held.

Delivered and signed this **23rd** day of **November, 2012** in the presence of the Appellant, Mr. Kemo for the State.

Court clerk – Aisha

C. W. Meoli
JUDGE