



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Revision 930 of 2011

GEOFFREY KAGIA NJERIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The appellant Geoffrey Kagia Njeri was convicted on the following counts:

Count I: Personation contrary to Section 382 of the Penal Code. Particulars being that on the 13th day of August, 2010 at Kiambu Unity Finance Bank Limuru branch, Limuru Township in Kiambu West District within Central Province, with intent to defraud, falsely represented himself to be the late Stephen Kimani Wainaina.

2. Count II: Cheating contrary to Section 315 of the Penal Code. Particulars being that on the 13th day of August, 2010 at Kiambu Unity Finance Bank Limuru branch, Limuru Township in Kiambu West District within Central Province, by means of a fraudulent trick, obtained cash Kshs.10,000/= from Grace Anne Muthoni.

3. Count III: Personation contrary to Section 382 of the Penal Code. Particulars being that on the 14th day of August, 2010 at Kiambu Unity Finance Bank Limuru branch, Limuru Township in Kiambu West District within Central Province, with intent to defraud falsely represented himself to be the late Stephen Kimani Wainaina.

4. Count IV: Cheating contrary to Section 315 of the Penal Code. Particulars being that on the 14th day of August, 2010 at Kiambu Unity Finance Bank Limuru branch, Limuru township in Kiambu West District within Central Province, by means of a fraudulent trick, obtained cash Kshs.3,500/= from Josephine Wanjiru Makumi.

5. Count V: Personation contrary to Section 382 of the Penal Code. Particulars being that on the 16th day of August, 2010 at Kiambu Unity Finance Bank Limuru branch, Limuru Township in Kiambu West District within Central Province, with intent to defraud falsely represented himself to be the late Stephen Kimani Wainaina.

6. The prosecution case is that on 13th August 2010, PW1, a teller at Kiambu Unity Finance Bank, Limuru branch was at her place of work when the appellant went to the counter. He had a bank waiting card and an ID in the names of Stephen Kimani Wainaina, and he wanted to withdraw

Kshs.17,000/=. **PW1** referred the appellant to the Customer Care Department, when neither his signature nor his appearance matched those in the records of the bank.

7. On interrogation the appellant said that he worked in Nairobi, while the details of the account holder indicated that he worked with Lari Dairies. The records confirmed that the appellant had made two previous withdrawals of Kshs.10,000/= and Kshs.3,500/= respectively, from the same account. **PW3** called the account holder's employer, Lari Dairies, and learnt that the account holder had died on 12th June 2010 in a road traffic accident. The appellant was handed over to police who subsequently charged him with the offences set out above.

8. Upon conviction the appellant was sentenced as follows:

i) **Count I** – Accused to serve 3 years imprisonment.

ii) **Count II** – Accused to serve 3 years sentence. Sentence in Count I and II to run concurrently.

iii) **Count III** – Accused to serve 1 year imprisonment.

iv) **Count IV** – Accused to serve 1 year imprisonment.

v) Sentence in Count III and IV to run concurrent.

vi) **Count V**: Accused to serve 1 year imprisonment. Accused will therefore serve 5 years in total.

9. The appellant has now come to court not to contest the conviction, but to offer mitigation in a bid to move this court, to order that all the sentences set out above should run concurrently.

10. The learned state counsel was of the opinion that the learned trial magistrate had applied herself properly, to the law and the evidence before her in arriving at the conviction, and sentence, and urged the court to uphold both conviction and sentence.

11. I have considered the appellant's mitigation, the period already served, and the value of the gains he made through this offence which, in total came to Kshs.13,500/=. I have also considered his age which is just 22 years, and that the presentencing report called for by the learned trial magistrate indicated that he was a first offender who had previously been of good conduct with no history of keeping bad company, or involving himself in crime. Although those interviewed were of the opinion that he should be jailed to teach him a lesson and also serve as a deterrent to other would be offenders, his antecedents as I have set out above appears to have been ignored in handing him a sentence of five years. I am therefore persuaded that it would be in the interest of justice to interfere with the sentence in his favour, as I hereby do.

The appeal is therefore found to be meritorious and is allowed in so far as it pertains to sentence only. The appellant's sentence is reduced to the period so far served, and he is ordered set free forthwith unless he is otherwise lawfully held.

SIGNED DATED and **DELIVERED** in open court this *8th day* of *November* 2012.

L. A. ACHODE

JUDGE