



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.314A OF 2010

JAMES NDUATI KINYANJUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant who admitted the offence of obtaining money by false pretences contrary to **section 313** of the **Penal Code**, was upon conviction sentenced to 24 months imprisonment. He was aggrieved and brought this appeal through the firm of Ikua, Mwangi and company Advocates on the grounds that:

- i) the plea was not unequivocal;
- ii) the charge sheet was defective;
- iii) the appellant's mitigation was not considered;
- iv) the sentence was harsh and excessive;

According to the charge sheet, the appellant is alleged to have obtained Kshs.16,000/= from Ronald Maina Thuo by falsely pretending that he (the appellant) was offering a course in Wildlife and Tour Guide at Lake Naivasha Wildlife and Tourism College, an institution that does not exist.

Counsel for the appellant did not address the court on the first two grounds but devoted her attention and argument only on the last ground namely that the sentence was harsh and excessive.

Although **section 348** of the **Criminal Procedure Code** provides that:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and who has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”

it is now settled that that section is not an absolute bar to bringing an appeal on any other grounds.

The appellant's counsel having dropped the other grounds, the only question raised is whether the sentence was excessive or illegal. **Section 313** aforesaid stipulates that a person found guilty of the offence of obtaining by false pretences is liable to imprisonment for 3 years. The sentence of 2 years imposed by the trial court is clearly not excessive, nor is it illegal.

For these reasons, the appeal fails and is dismissed.

Dated, Delivered and Signed at Nakuru this 17th day of May, 2011.

**W. OUKO
JUDGE**