

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 689 of 2007

B.W. W.....APPELLANT

VERSUS

REPUBLICRESPONDENT

**(From the original conviction and sentence in Criminal Case No. 685 of
2005 of the Chief**

Magistrate's Court at Nairobi by M. W. Muigai (Mrs.) – Principal Magistrate)

JUDGEMENT

The appellant was charged with obtaining money by false pretences contrary to section 313 of the Penal Code. It is alleged the appellant together with her co-accused person before the lower court obtained Kshs.267,000/= from Peter Njenga Wamuyu by falsely pretending that they were in a position to sell motor vehicle registration No. KAP 694L Toyota Hiace a fact they knew to be false. After full trial they were convicted and sentenced to 3 years imprisonment. The appellant filed the present appeal against the sentence only. It is the contention of the appellant that she is single parent with two sons who are school going children and who depend on her for their education and livelihood. It is also her contention that she is HIV positive and the conditions at the prison is unfavourable to her health. It is also her contention that she is a first offender who needs rehabilitation in order to reform herself. I have considered the mitigation and in particular the medical report filed by the appellant on her HIV status and in my view it is in the interest of justice to give the appellant a non-custodial sentence. In the premises I set aside the sentence of 3 years and substitute with 2 years suspended sentence from today. In the event the appellant commits an offence within the next 2 years, she will also serve the earlier sentence imposed by the earlier court. In that regard therefore the appellant's appeal against sentence succeeds to that extent.

Dated, signed and delivered at Nairobi this 14th day of January 2010.

M. WARSAME
JUDGE