

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 35 of 2009

(From original conviction and sentence in Criminal Case No. 229 of 2009 of the Principal Magistrate's Court at Molo - G. Sagero {R.M.} dated 29th January, 2009)
FRANCIS KUGURU GIKOIMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of cheating contrary to Section 315 of the Penal Code, (Cap 63 Laws of Kenya). He was on his own plea of guilty convicted and sentenced to a maximum term of three years imprisonment as provided for under section 315 of the Penal Code.

The Appellant having been convicted on his own plea of guilty, the law only allows him to appeal on the grounds of the extent and/or legality of sentence under section 348 of the Criminal Procedure Code, (Cap 75 Laws of Kenya).

The punishment for the offence of cheating under section 315 of the Penal Code aforesaid is imprisonment for a period of three years. The sentence was therefore lawful, and cannot be challenged on the ground of either the extent or the legality thereof.

The Appellant pleaded that his wife was sick and pregnant and had to use the trick to get the money and that he was remorseful and would not repeat the offence.

The prosecution however told the court that the Appellant is a habitual offender and hence the maximum sentence he got. An habitual offender can hardly plead for mercy only to go out there and commit the same offence. His pleas of reform do not ring with any seriousness of remorse.

In the circumstances, the appeal herein has no merit at all. I confirm the conviction and sentence by the trial court and dismiss the Appellant's appeal dated and filed on 10th February 2009.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 23rd day of April, 2010

M. J. ANYARA EMUKULE

JUDGE