



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL 175 of 2008

JOSEPH CHIBULE TSUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant herein **JOSEPH CHIBULE TSUMA** has challenged his conviction and sentence by **HON. W.F. ANDAYI** Senior Resident Magistrate Kaloleni Law Courts. The Appellant was arraigned before the lower court on 20th June 2008 and was charged on two counts of **OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SECTION 313 OF THE PENAL CODE**. Both counts were read out to the Appellant and he entered a plea of guilty to each individual charge. Thereafter as required by S. 207(2) of the Criminal Procedure Code the facts of the charge were read out to the Appellant by the prosecutor **INSPECTOR NGOMO**. The Appellant did maintain his guilty plea by stating -

“All these facts are correct”

The learned trial magistrate then proceeded to convict the Appellant on both counts. In his mitigation the Appellant reiterated his plea of guilty by stating -

“It is true I met these men and took money from them. I had promised to refund by today ...”

There can be no doubt at all that the learned trial magistrate followed the correct procedure in taking and recording the Appellant’s plea. There can further be no doubt that the Appellant entered a clear and unequivocal plea of guilty to both charges. As such I find that the conviction of the Appellant on both counts was proper and I do uphold and confirm the same.

In his written submissions the Appellant pleads against his sentence which he terms harsh. The trial magistrate after listening to the Appellant’s mitigation sentenced him to serve two (2) years imprisonment on each count and ordered that the sentences run consecutively making it a total sentence of four (4) years in prison. I have considered the amounts obtained and the fact that the Appellant pleaded guilty, thus he did not engage the court in an unnecessary trial. In my view given those circumstances the sentence was harsh. The trial magistrate ought to have considered imposing a fine with a sentence of imprisonment in lieu of payment. I note that the Appellant was sentenced on 20th June 2008 thus he has to date spent about two (2) years behind bars. I have no doubt that he has learnt his lesson. I do therefore reduce his sentence to time served. I now order that the Appellant be released forthwith unless he is otherwise lawfully held.

Dated and Delivered at Mombasa this 25th day of May 2010.

M. ODERO
JUDGE

Read in open court in the presence of:

Mr. Onserio for State

Appellant in person

M. ODERO
JUDGE
25.05.2010