



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 130 of 2009**

(Appeal arising from original BGM CM CR. NO.455 of 2009)

WILLIAM KAMATI KHISA:::::APPELLANT

~VRS~

REPUBLIC::::: RESPONDENT

JUDGMENT

The Appellant William Kamati Khisa was convicted by Bungoma Resident Magistrate of the two offences. Count 1 was the offence of conspiracy to commit a felony contrary to section 393 of the Penal Code where the Appellant was sentenced to serve two (2) years imprisonment. Count II was the offence of fraudulently procuring registration of a title deed contrary to section 155 (2) (b) of the Land Registration Act, Cap 300 and was sentenced to one (1) year imprisonment.

The grounds of appeal in the petition may be summarized thus:

- (1) That he was convicted of an offence he did not commit.**
- (2) That he is an old man of 90 years and has lost his four (4) children in 2007 while in prison.**

The state opposed the appeal on grounds that the evidence against the Appellant was overwhelming. The Senior State Counsel, Mrs. Leting had no objection to the Appellant being given a non-custodial sentence for the remaining jail term due to his advanced age and poor state of health. She however submitted that the sentence imposed on both counts was reasonable.

The facts of the case are that the complainant PW1 was looking for a parcel of land to purchase between December 2005 and March 2006 using his retirement benefits. PW1 had just retired from the Department of Forests, Ministry of Environment and Natural Resources as it then was. He was introduced to the Appellant who told him that he had a three (3) acre parcel of land which he wanted to sell. The Appellant showed PW1 land L.R. NO.E.BUKUSU/S.MYANGA/79 which was registered in the names of Victor Sakama Mwandika. PW1 was convinced by the Appellant that he had bought the land from Mwandika but the transfer was yet to be effected. The complainant paid the agreed purchase price of Ksh.280,000/= and paid more cash for the developments on the land. PW1 later went to the Lands office to pursue the transfer and found out that the Appellant owned no such land as he had purported to do. The Appellant on demand failed to refund the complainant's money leading to the arrest and arraignment in court of the Appellant and his two accomplices.

I have carefully scrutinized the evidence of PW1 and that of other witnesses. The evidence was watertight and the Appellant did not challenge it even during cross-examination. The defence was a mere denial that the Appellant was not involved in the crime and that he came to know his accomplices in the police cells. The trial magistrate in her judgment said:

“The evidence against the accused persons was weighty though they (Appellants) only gave a blanket denial.....”

I find that the Appellant was convicted on sound evidence. The case was proved beyond any reasonable doubt by the prosecution. The conviction is hereby upheld.

The maximum sentence under section 393 of the Penal Code and section 155 (2) (b) of the Registered Land Act is seven (7) years and one (1) year imprisonment respectively. The sentence of two (2) and one (1) year imprisonment is therefore reasonable for a first offender.

When the Appellant appeared in court for the hearing of the appeal, the court noted that he is of advanced age and was in a poor state of health. He has now served only eight (8) months imprisonment. The state is of the view that the Appellant deserves a non-custodial sentence due to his deteriorating health. I am in agreement that such a move would save the Appellant from further suffering in prison where medical care is inadequate. I therefore set aside the remaining prison term and substitute it with a probation term of one (1) year subject to his suitability. The Appellant is hereby referred for a Probation Officer's report to be ready within seven days.

The appeal only succeeds to the extent substitution of sentence.

**F. N. MUCHEMI
JUDGE**

Judgment dated and delivered in open court on the 24th day of June, 2010 in the presence of the Appellant and the State Counsel
Mrs. Leting

**F. N. MUCHEMI
JUDGE**