

GEORGE MACHARIA MARUGUAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No. 2265 of 2005 of the Chief Magistrate's Court at Nairobi S. Muketi (Mrs.) – Senior Principal Magistrate)

JUDGEMENT

The appellant was charged with obtaining money by false pretences contrary to section 313 of the penal Code. The particulars are that between 22nd day of July 2005 and 2nd day of August 2005 at Nairobi within Nairobi area jointly with others not before court with intent to deceive or defraud obtained Kshs.1.2 million from Alice Njuuru Mumbi by falsely pretending that he was in a position to sell her jewelleries. After full trial he was convicted and sentenced to pay a fine of Kshs.400,000/= in default to serve 2 years imprisonment. The appellant is aggrieved with that decision hence this appeal.

The evidence of the complainant is that on 19th July 2005 while heading to Equity Bank Four Way branch, he met a man who greeted her and called her name. The man was a person known to her as they had met at Uchumi Supermarket where he was working. The man then informed her that he had a business proposal which he wanted to discuss with her and they immediately exchanged their telephone numbers. They met on 22nd July 2005 at Nados with her friend Mercy Njeri Kinyanjui where they were informed by the said man that he had jewelries which he wanted to sell. The man then introduced her to two other persons by the names Richard and Martin. They again called another man by the name Gikonyo who came with 10 pieces of shiny items which was introduced as jewelries. After several meetings she paid some money in bit and pieces which totaled to Kshs.1.2 million. During the time of the said meetings, one of the person who was introduced to her as a cashier for the jewelry buying company was the appellant. It is alleged by the company that the appellant was introduced as an accountant from the company that was eventually to buy the jewels. The complainant exhibited documentary proof to show that she had withdrawn monies from her account and that of her husband who was away in USA in order to pay for the jewels business that was introduced to her by the appellant and his friends. After making the payments to the appellant and his friends they disappeared into the thin air leaving the complainant in helpless loss and grief. One day she spotted the appellant who was carrying the same briefcase that he used to carry during the time they were discussing the business with the complainant and his other friends. The appellant tried to disappear into a bar but with the help of the police officers he was immediately arrested and taken to Central Police station. The evidence of the complainant was supported by PW2 who also met the appellant on two occasions.

In his defence the appellant denied that he was a victim of mistaken identity and that he had nothing to do with the charges that were preferred against him.

I have considered the evidence on record and I am in total agreement with the trial court that the appellant was part and parcel of the scam that was committed against the complainant. He had met the complainant on several occasions during broad daylight and the circumstances made the complainant to positively identify him as one of the perpetrators of the scam. The incident and series of the meetings took place during the day making the identification of the appellant accurate and safe from mistake and error. The complainant in her evidence described in details the role played by the appellant in the commission of the crime as he posed as the accountant from the jewel buying company. I am therefore satisfied that PW1 and PW2 were able to identify the appellant as one of the persons who hatched a plan and ultimately executed against the complainant in order to defraud her of her money and personal items. The meetings lasted for hours and the appellant and the complainant were facing each other on the same table on several occasions making the possibility of mistake or error nil. I am in agreement with the trial court that the circumstances existing during the time the complainant was transacting the alleged business scam

with the appellant was conducive with positive identification hence he was properly and correctly identified as one of the persons who deceived and defrauded the complainant. He was arrested with the help of complainant together with PW2 by PW3. In my mind therefore the appellant was convicted correctly on the strong evidence tendered by the prosecution. I am satisfied that the prosecution proved its case beyond reasonable doubt and that the conviction entered by the trial court is based on overwhelming and strong evidence adduced by PW1 and PW2. There is no mistake or misdirection committed by the trial court in convicting the appellant for the offence charged. The evidence against him is overwhelming and safe to sustain his conviction. The appeal therefore has no merit and it is hereby dismissed. I uphold the conviction and confirm the sentence entered by the trial court.

Dated, signed and delivered at Nairobi this 27th day of October 2009.

M. WARSAME

JUDGE