



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal Case 516 of 2007

SAUMU HESSEIN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the conviction and sentence in criminal case No. 1415 of 2007 Chief Magistrate's Court at Nairobi)

JUDGEMENT

Saumu Hussein (the appellant) had been charged with detaining by false pretences contrary to Section 313 penal code particulars being that on 13/1/2007 in Riruta, with intent to defraud obtained Kshs. 100,000/- by falsely pretending that she would sell land parcel Dagoretti/Riruta/5114 measuring 0.10 hectares.

The appellant pleaded guilty to the charge which was read to her in Kiswahili language.

The facts were stated and she confirmed the same to be correct.

The plea was thus unequivocal.

The prosecutor indicated that she was a first offender and in mitigation, appellant said she would pay the money as she had rental houses.

The learned trial magistrate in passing sentence, noted that the offence was serious and that appellant had abused the trust placed on her by the complainant. She also noted that there was no recovery of the money and sentenced appellant to serve 3 (three) years imprisonment.

The appeal is only on sentence – the appellant stated that she is remorseful and sought forgiveness.

In her submissions she informed Court that her husband had died and she had children.

The learned state counsel Miss. Gateru conceded to the appeal saying that the appellant was the first offender, and that the sentence was harsh and excessive.

Let me state from the onset that for a charge under Section 313 Penal Code, the same is deemed as a

misdemeanor attracting a maximum jail term of three years and the sentence imposed was a legal one. However one must also consider that the purpose for sentence is not just to punish the offence, the general circumstances surrounding the commission of the offence and the possibility that the appellant may reform must be considered. Taking into account the appellant's willingness to reform and that in mitigation she had informed the lower Court of her willingness to pay back the money and the sum involved, then I think a prison term of one year would be more appropriate.

I therefore allow the appeal on sentence, set aside the term of imprisonment imposed by the learned trial magistrate and substitute the same with a one year (1) term of imprisonment runs from the date of sentence by the trial Court.

Delivered and dated this 18th day of June 2008 at Nairobi.

H.A OMONDI

JUDGE