

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 18 of 2008

WANJOHI KAMONDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

In this case the appellant with another were charged with offence of making a document and in count II obtaining by false pretenses. Both accused were acquitted under count one. But the Appellant alone was convicted on the second count.

There is evidence that agreement was made by one Mwai who is in reality called Warutere. He is the one who received the money. This Mwai has not been arrested and the charge sheet does not disclose a charge of conspiracy to obtain the money by false pretences. In that case there is no evidence to support the conviction of the appellant. I agree with state counsel that the conviction cannot be supported. The appellant's Counsel is of the same view.

In the circumstances it is my finding that the appeal has merit and I do allow the same and quash conviction and set aside the sentence. I order that the Appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 10th June, 2008.

J. N. KHAMINWA

JUDGE