

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 216 of 2005

(From Original Conviction and Sentence in Criminal Case No. 2554 of 2003 of the Chief Magistrate's Court at Mombasa: D. OCHENJA – S.R.M.)

DAVID KARITHI LAIBULA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

I agree with Mr. Monda, learned State Counsel, that this appeal should be allowed.

The Appellant was upon trial before the Senior Resident Magistrate at Mombasa on two counts of obtaining money by false pretences contrary to Section 313 of the Penal Code convicted and sentenced to two years imprisonment on each count. The sentences were ordered to run consecutively. It was alleged that between 1st January and 28th February 2003, with intent to defraud, the appellant obtained from one Omar Matata Ksh.25,000/- by pretending that he was in a position to influence the said Omar Matata's promotion. It was also alleged that on 28th March 2003 he obtained from the same Omar Matata a sum of Sh.14,000/- by pretending that he was in a position to secure employment for his brother.

Produced in evidence before court were letters of promotion and appointment allegedly respectively authored and signed by J.M. Ndingiria and Salim Haisha of the Personnel Department of the Kenya Ports Authority. They were, however, disowned by Bernard Basa of that Department.

There was therefore an issue as to who wrote and or signed them. Though the prosecution should have established that but did not, the trial court fell into error in assuming that they were authored and or signed by the Appellant. The learned trial magistrate also erred in believing the evidence of PW1 and PW2 who were participants in that crime. If this was a corruption case their evidence alone could not have found a conviction.

For these reasons I agree with the learned State Counsel that the Appellant's conviction cannot be allowed to stand. Consequently I quash the conviction and set aside the sentence. The Appellant shall be released forthwith unless otherwise lawfully held.

DATED and delivered this 16th day of October 2007.

D.K. MARAGA

JUDGE