



**REPUBLIC OF KENYA**

**HIGH COURT AT EMBU**

**CRIMINAL APPEAL 60 OF 2005**

**BERNARD NDWIGA NGOROI.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

Bernard Ndwiga Ngoroi was charged with the offence of obtaining money by false pretences contrary to section 313 of the Penal Code. The accused was convicted and sentenced to three years in prison. This sentence is the maximum prescribed for this offence. The Appellant filed 5 grounds of appeal which were argued by his advocate. The prosecution evidence was that the complainant was known the appellant for quite some time. The complainant's son was undertaking education at Kangaru Boys School and they came to know one another. The complainant and his wife were lured by the Appellant to part with their money Shs.106,000/= in a well organized scheme allegedly to purchase some material to wit mercury from some people from Rwanda. The complainant paid the money when they were shown that the substance was mercury and the appellant promised to return their money after the sale of the commodity. The complainant was never refunded their money and after some time they returned to their house. The appellant had not disclosed his real name to them but as the complainant and his wife showed that the appellant is the human being they had dealt with the Trial Magistrate concluded and made a finding that the appellants real name of Bernard Ndwiga Ngoroi, and the other name Benson Muturi Kinyua belonged to one and the same person namely the Appellant. The Appellant gave a sworn statement whereby he denied knowing the complainant and his wife and being the person who took the money. However he admitted that the complainant was informed about him (appellant) by his wife.

The evidence of PW3 P.C Muchangi shows that he received a complaint on 3/3/2004 from the complainant of how appellant obtained money from him by pretending he was dealing with mercury which would get him a lot of money. The first appellant said he required Shs.3000/- to entertain the Rwandese visitors then he asked for 76,000/= to pay for the mercury and then he asked for some more to complete the price. The complainant gave Shs.106,000/=. The complainant gave the description of appellant to the PW3 and PW3 was able to identify the appellant at the police canteen and the complainant who was present confirmed that the appellant seen by the police officer was the appellant in this case. Again in the cross examination of the complainant, PW1 by appellant he suggested that complainant's wife. PW2 had arranged with the appellant to con complainant. Also there was evidence that appellant had telephoned and visited the complainant in his office in Treasury building in Nairobi. And that it was PW2 who had arranged to bring visitors from Rwanda and that the whole plan was a master mind of the complainant's wife (PW2). Taking the above into account the trial Magistrate concluded that the sworn statement of the Appellant was false. I find the Trial Magistrate was correct in his finding.

On the grounds of Appeal, I find the prosecution case was proved beyond all reasonable doubt. The

evidence of the documents proved that the complainant did make transactions in their bank and their story that they had the money was not false. It is true that the complainants were dealing with a person (appellant whose name they did not know but that is the plan of all deceivers. However there is clear evidence that they were able to make physical description which enable the police to arrest the appellant.

On the issue of sentence the trial Magistrate meted the maximum provided by law. And it is in the discretion of the Trial Magistrate to measure the sentence according to the evidence place before him after considering all mitigation. In this case the appellant admit he was already convicted in another Criminal Case where he is serving 6 years sentence. He considered the seriousness of the offence and correctly assessed the maximum sentence allowed.

I find that the prosecution evidence proved the case beyond any reasonable doubt and I see no reason to interfere either in conviction or sentence. The upshot is that the appeal is dismissed.

Dated this 19<sup>th</sup> November, 2007.

**J. N. KHAMINWA**

**JUDGE**

**19/11/2007**

**Khaminwa – Judge**

**Njue Clerk**

**Mr. Kimathi for State**

**Mr. Ithiga HB for Mugo**

**Appellant present**

**Read in open court.**

**J. N. KHAMINWA**

**JUDGE**