

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal 29 Of 2005

EVANS JAPHETH NGUMBI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Evans Japheth Ngumbi was charged with several offences under the **Penal Code**. He was charged with the offence of **forgery contrary to Section 349**. The particulars of the charge were that on the diverse dates between 20th June 1997 and 26th of June 2002 at an unknown place within the Republic of Kenya, the appellant jointly with others forged a Kenya National Identity Card No. 8932906 purporting it to be a valid National Identity Card of James Githegi Nduati. He was also charged with **uttering a false document contrary to Section 353**. The particulars of the charge were that on the 26th of June 2002, at National Bank of Kenya Narok Branch, the appellant knowingly and fraudulently forged a Kenya National Identity Card No. 8932906 to Joseph Cheptum a bank official purporting it to be a National Identity Card of James Githegi Nduati. He was further charged with **attempting to obtain money by false pretences contrary to Section 313 as read with Section 389**. The particulars of the charge were that between the 20th and 26th of June 2002 at National Bank of Kenya Narok Branch with the intent to defraud, attempted to obtain from Joseph Cheptum, an officer incharge of bills and foreign exchange at the National Bank of Kenya Narok Branch Kshs 120,000/= by falsely pretending that he was the holder of account number 0121802247400 Harambee Avenue Branch Nairobi.

The appellant pleaded not guilty to all the charges and after a full trial he was found guilty of all the three counts and duly convicted. He was sentenced to serve three years imprisonment on each of the first two counts. On the third count he was sentenced to serve 18 months imprisonment. The sentences were ordered to run concurrently. Being aggrieved by his conviction and sentence the appellant has appealed to this court against both the said conviction and sentence.

At the hearing of the appeal, the appellant however abandoned his appeal against conviction but instead choose to argue his appeal against sentence. He pleaded with the court to exercise leniency on him and reduce the custodial sentence imposed on him. He told the court that he was remorseful and further that he has been in custody for the last four years. He stated that he regretted committing the offences. He further told the court that he had suffered greatly while in prison. He told the court that he had contracted a skin disease which had not cured inspite of constant treatment. He further told the court that he was aged 58 years and would not repeat the offence if his plea for a reduction of sentence is considered favourable. He also told the court that his foot had become cancerous. He further told the court that he was now reformed and would be a good citizen if he is released from prison.

Mr Koech Learned State Counsel submitted that the sentence imposed on the appellant was neither excessive nor harsh. This was because the appellant had been charged and convicted for committing similar offences in other parts of the country. According to Mr Koech, the appellant was a seasoned fraudster and should remain in prison so as to protect the members of the public from his criminal activities. He further submitted that from the appellant's past record, it was impossible to believe that he is someone who could be reformed in view of the fact that the appellant is a repeat offender. Learned Counsel urged the court not to disturb the sentence imposed.

I have considered the arguments made by the appellant and Mr Koech on behalf of the State for and against the appellant's plea for reduction of sentence. The appellant has tried to impress this court that for the four-year period that he has been in lawful custody, he has been sufficiently punished and further had reformed. The appellant further told the court that he suffered from ailments, which in his view could only be attended to while he was out of prison. As stated earlier, the appellant is not appealing against conviction. He has admitted the offences. Having considered the appellant's plea for reduction of sentence and the objection thereto by Mr Koech, I am of the view that the sentence meted out on the appellant by the trial magistrate was neither excessive nor harsh in the circumstances of this case. The appellant is a repeat offender.

At the time he was convicted he had already served two other terms in prison on account of offences of a similar nature. The trial magistrate properly exercised his discretion in sentencing the appellant. I see no reason to interfere with the trial magistrate's proper exercise of discretion in sentencing the appellant. The appellant has demonstrated by his behaviour that he is a person who cannot be trusted by the society. He has not been deterred nor is he afraid that in the event that he would be caught he would serve a term in prison. The appellant has committed offences of a similar nature in various townships in this country. He seems to have perfected the act of reaping where he had not sown. I agree with Mr Koech that the appellant for the time being should be kept behind bars so as to protect the innocent members of the society. The mitigation of the appellant notwithstanding, his criminal activities is such that this court cannot afford to overlook it.

For that reason, I disallow his appeal on sentence. I dismiss the appeal against sentence. The sentence imposed by the trial magistrate is hereby confirmed. The appellant shall serve the said sentence imposed.

It is so ordered.

DATED at NAKURU this 1st day of February 2006.

L. KIMARU

JUDGE