



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**CRIMINAL APPEAL 103 OF 2003**

FRANCIS MWAI MURIUKI ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

*(Appeal from original Judgment and Conviction in Chief Magistrate's Court at Nyeri in Criminal Case No. 103 of 2001 dated 6<sup>th</sup> June 2002 by Mrs. M. R. Gitonga – S.R.M. – Nyeri)*

**J U D G M E N T**

Francis Mwai Muriuki hereinafter referred to as the appellant was tried by the senior Resident Magistrate Nyeri on 5 counts of the offences of obtaining by false pretences contrary to section 313 of the penal Code. The particulars of the offence for each count showed that he obtained various amounts of money from each of the 5 complainants by falsely pretending that the money was to facilitate purchasing of a plot for the construction of a church which was to be funded by the President of the Apostolic congregation in Germany. The appellant was found guilty of all the 5 counts but was only convicted of 4 counts to which he was sentenced to serve 4 months imprisonment in respect of each count.

Being dissatisfied with his conviction and sentence, the appellant has now brought this appeal against both his conviction and sentence. The appellant's grounds of appeal includes inter alia:

- **That the evidence adduced against him was full of contradictions.**
- **That the trial magistrate failed to appreciate that the witnesses who testified were from a different church i.e. Union of Apostolic Church and not from the appellant's church which was Glory Church of Kenya.**
- **That the trial magistrate ignored the defence of the appellant.**
- **That the trial magistrate erred in failing to release motor vehicle KAD 951Q to the appellant.**

I have carefully reconsidered and evaluated the evidence which was adduced before the lower court. There was overwhelming evidence that the appellant obtained the monies from the various complainants. Documents were produced showing that there was an agreement for construction of a church for the Apostolic Congregation. As per the evidence of the Document Examiner the forms were signed by the appellant. Both Rev. Mathew Justus Gachoki Mbogo (P.W.4) and Michele Nyaga (P.W.6) who are officials of the Apostolic Congregation Church in Kenya testified that the appellant was ordained a priest in that church but he was suspended after it was discovered that he was involved in collecting money on

the false pretence that he wanted to purchase a plot. As at the time the appellant received monies from the complainants, he was no longer authorized to operate as a priest for the Apostolic Congregation of Churches, in any case the church was not intending to put up any churches.

In his defence the appellant explained that he had differences with P.W.6 and P.W.4 who were jealous of him. He was appointed an apostolic evangelist by the leader of the apostolic congregation. He was asked to get contractors to build churches. He talked to contractors and gave them work. He was merely supervising and the person who was to pay came in December 2000 but left claiming he was sick. The members of the Union Apostolic Church informed the contractors that they would not be paid as the appellant was excommunicated in May 2000. It was then they reported to the police. In other words the appellant's defence was that there was actually an agreement for construction of a church but the money was not paid because of differences.

The trial magistrate considered the defence of the appellant but rejected the same. I am satisfied that the Appellant was not authorized to enter into any contracts on behalf of the Apostolic congregation or purchase any plots for building churches nor were there any churches being built by the Apostolic congregation. At no time did the appellant mention Glory Church of Kenya in his defence and the trial magistrate could not therefore consider the same.

I find that there was sufficient evidence to sustain convictions on all the 5 counts although the trial magistrate in advertently entered a conviction on only 4 of the counts.

As regards the issue of release of motor vehicle KAD 951 Q, the same was dealt with by this court in High Court Criminal Revision No. 4 of 2003.

Finally on the sentence the same was very lenient and would have called for enhancement had this been sought by the state.

The upshot of the above is that I find no substance in this appeal and do therefore dismiss it is its entirety.

***Dated signed and delivered this 7<sup>th</sup> day of December 2006***

**H. M. OKWENGU**

**JUDGE**