



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 419 OF 2003

FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO.
798
OF 2002 OF THE CHIEF MAGISTRATE'S COURT AT NAIROBI

GEORGE GITAU GAKAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

GEORGE GITAU GAKAU was convicted on seven counts, and sentenced as follows:

1. Making a document without authority, contrary to section 357(a) of the Penal Code -18 months in jail.
2. Possession of a Kenya National Identity Card containing false entries, contrary to section 14(h) of the Registration of Persons Act – 18 months in jail.
3. Uttering a false document contrary to section 353 of the Penal code – 18 months in jail.
4. Obtaining money by false pretences – 2 ½ years in jail.
5. Obtaining money by false pretences, contrary to section 313 of the Penal Code – 2 ½ years in jail.
6. Obtaining money by false pretences, contrary to section 313 of the Penal Code – 2 ½ in jail.
7. Attempt to obtain money by false pretences, contrary to section 313 of the Penal code – 18 months in jail.

When passing sentence on the appellant, the learned trial Magistrate ordered that the sentences run concurrently. Therefore the appellant would spend no more than 2 ½ years in jail. But the appellant is still very dissatisfied with the sentence. In his appeal before me, the appellant pointed out that he was suffering from Tuberculosis and stomach ulcers. He also said that his eye-sight was also troubling him very seriously. He was therefore pleading with this court to set him free, so that he might be able to seek appropriate medical treatment.

In answer to the appellant's submissions, the learned State Counsel, Mr. Makura pointed out that the offences in respect of which the appellant was charged involved substantial sums of money. By my calculations, the amount involved was in excess of Kshs. 580,000/=

The offences committed by the appellant did not just involve the relatively large sum cited above, it

involved deliberate and conscious actions, intended to deceive. In other words, it is not the kind of offence which a person could commit instantaneously. In order to commit the offences, the appellant had to make an optimum Account Card. He then had to get an identification card whose particulars matched those of the person whose account he planned to raid. The appellant then presented himself to the bank and managed to withdraw a total of over Kshs 490,000/=.

On the fourth occasion, the appellant went to withdraw Kshs 98,702/=. PW5, Eunice Atieno Oiro, an employee of Barclays Bank of Kenya Limited suspected the identification card to be a fake. It is for that reason that she declined to pay money to the appellant, hence the offence in count 7, as set out at the beginning of this judgment.

I have set out the gist of the actions committed by the appellant, as it enables me to understand the kind of person that the appellant was. But he is now pleading with the court that he be set free. The learned State Counsel says that the sentences meted out to the appellant are not excessive or harsh. Interestingly the appellant is in agreement with the respondent, about the fact that the sentences are not harsh or excessive.

That being the case, what is the basis of the appellant's request for a reduction of the sentences? He says that it is because he is unwell. I am afraid that the state of an appellant's health is not normally a basis for interfering with a sentence which is otherwise lawful.

I also note that during his mitigation, the appellant did ask the learned trial magistrate to give him non-custodial sentence, so that he could continue receiving medical treatment. However, as the appellant had a previous conviction the trial court sentenced him to jail terms on each of the seven counts.

As both the appellant and the respondent agree that the sentences are not harsh or excessive, I find no reason to interfere with the same. Therefore, this appeal stands dismissed. The conviction and sentences are duly upheld.

Dated at Nairobi this 4th day of March 2005

FRED A. OCHIENG

JUDGE

Delivered in the presence of

For the State

Appellant in person present

Mr. Odero court clerk