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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Criminal Appeal 123 of 2004

(From original conviction and sentence of the Senior Resident Magistrate's Court
at Kilgoris in Criminal Case No.369 of 2001 –

DISMAS SIMIYU WASWA APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

Appellant was convicted for the offence of cheating contrary to S.315 of The Penal Code. It was alleged that on 15th April 2001 at Moi's Bridge Town he with others not before the court, by means of fraudulent tricks obtained shs.200,000/- from Martin Ole Kunkun Kipasen. He was sentenced to 2 years imprisonment.

The appeal is against sentence only. The appellant stated that the trial magistrate erred in not considering any other sentencing option. He said sentence of 2 years was harsh and excessive.

I have considered the appeal. It is not true that the trial magistrate did not consider other options. Proceedings show that he first called for a probation report which was not favourable to the appellant. Thus when he was sentencing the appellant he had all the appellants background which indicates that he had been involved in the conning game for sometime.

The appellant obtained shs.200,000/= from the complainant. That money was not recovered. The amount is not small. I feel that the magistrate properly directed himself when he sent the appellant to jail. He clearly stated that he had considered the appellants mitigation which was that he had children in school.

However in the light the unfavourable report from the Probation Officer the magistrate chose to give a custodial sentence. This was proper.

I therefore find the appeal has no merit and the same is dismissed.

Dated 5th May 2005.

KABURU BAUNI
JUDGE

cc. Mobisa
Mr. Kemo for State
Appellant in person