

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CRIMINAL APPEAL 479 OF 2003

JAMES MAINA KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

During the hearing of the appeal, the same was consolidated with Criminal Appeal No.484 of 2003. The reason was that the Appellant had been charged for similar offences in the two files. The Appellant has appealed against the original conviction and sentence in Principal Magistrate's Court, Nyahururu No.3568 of 2003 and No.3569 of 2003. In the above cases, the Appellant had been charged for the offence of Obtaining Money by False Pretence, contrary to Section 313 of the Penal Code.

The facts of the prosecution case as stated in the Charge Sheet in Criminal Case No.3568 of 2003 are as follows:-

“On the 7th August, 2003, at Shamata Village in Nyandarua District within Central Province, with intent to defraud obtained from VIRGINIA WANJIKU WANG’OMBE the sum of Kshs.34,000/- by falsely pretending that he was in a position to sell to the said VIRGINIA WANJIKU WANGO’MBE 35 Mature Pine Trees from his farm a fact he knew to be false.”

In the Principal Magistrate, Nyahuuru Criminal Case No.3569 of 2003, the Complainant was Julius Mwangi Kiongo while the amount was Kshs.35,000/-. On the other hand, the number of pine trees was 45.

When the appeal came up for hearing the Appellant stated that he did not wish to challenge the convictions, instead, he only appealed against the sentence that was imposed. On the other hand, the State through Mr. Gumo, Asst. Deputy Public Prosecutor, opted to leave the matter to the discretion of the Court.

From the record it is apparent that the Appellant had admitted committing the two offences when he was arraigned before the Court on 6th October, 2003. He was later sentenced to 3 years imprisonment. That means that he has already served 2 years of the sentence. Having gone through the circumstances of the case carefully, I am of the considered opinion that the Appellant has already learnt his lesson. His continued incarceration will not serve any useful purpose. In exercise of my discretion, I hereby reduce the sentence to the period already served.

The Accused should be released forthwith unless lawfully held. Those are the orders of the Court.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of the Appellant and Mr. Gumo, Asst. Deputy Public Prosecutor.

MUGA APONDI

JUDGE

25th October, 2005