

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.131 OF 2003

**(From original conviction and sentence of the CM's court at Kisii in criminal case
No.1467 of 2001.)**

TOM OMOSA NYAMOSI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

The appellant was convicted by the Nyamira District Magistrate for the offence of obtaining money by false pretences c/s 313 Penal Code and was sentenced to two years imprisonment.

On 26th July 2001 in Kisii Town he obtained shs.5,500/= from Zakari Ochoi by falsely pretending he would sell him a T.V. set, Solar Panel and Radio.

I have gone through the evidence. I am satisfied that the evidence adduced was clear and overwhelming. The appellant was given money during the day. He was properly identified and the complainant had no doubts the person he gave the money. The magistrate reached the proper conclusion on the evidence on record. On the issue of sentence I found it is excessive. Appellant obtained shs.5,500/=. He was a first offender and though he did not say anything in mitigation two years imprisonment was in the higher side.

I therefore set aside the sentence of two years and substitute it with a fine of shs.10,000/= i/d one year imprisonment.

It is so ordered.

KABURU BAUNI

JUDGE

6/2/2004

Signed, dated and delivered this 6th day of February 2004 in presence of the appellant.

KABURU BAUNI

JUDGE