



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NO.125 OF 2004**

(From original conviction and sentence of the RM's court at Rongo in criminal case No.378 of 2004.)

ALFRED MATOKE OBONYO ..... APPELLANT  
VERSUS  
REPUBLIC ..... RESPONDENT

**JUDGEMENT:**

Appellant was convicted for the offence of obtaining by false pretences c/s 313 Penal Code in that on 24th November 2003 at Giasaiga sub-location Gucha District with intent to defraud he obtained from Nyabuto Osinde the sum of shs.19,500/= by falsely pretending to sell a piece of land to him.

He had pleaded guilty to the offence and was jailed for 2 years.

The State Counsel did not object to the appeal. However I find that appellant's plea was unequivocal. Record shows that the charge was read to him in Kegusii and he answered

"It is true."

The facts were read to him. He again answered

"The facts are quite correct."

The facts clearly stated that he had promised to sell a piece of land to the complainant. He was paid sh.19,500/= on 9/12/03. He then went underground up to 26th May 2004 when he was arrested. He did not sell the land to the complainant. That is obtaining money by false pretences.

I find the facts given supported the charge. I therefore uphold the conviction.

As to the sentence he was sent to jail for 2 years. He had pleaded guilty and pleaded for leniency. He was a first offender. Jail term of 2 years was excessive in the circumstances. A non-custodial sentence was warranted.

I therefore set the sentence aside and substitute it with one of a fine of shs.20,000/= in default 6 months imprisonment.

It is so ordered.

**KABURU BAUNI**  
**JUDGE**  
**28/7/04**

Dated and delivered on 27th July 2004.

**KABURU BAUNI**  
**JUDGE**