



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 423 OF 2003**

**(From original conviction(s) and Sentence(s) in Criminal case No. 9226 of 2002 of the Chief Magistrate's Court at Kibera (Mr. Omosa – R.M.)**

**DAVID IGUNJA KISANGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant **DAVID IGUNZA KISANGA** was charged and convicted of the offence of **OBTAINING MONEY BY FALSE PRETENCES** contrary to Section 313 of the Penal Code before the Chief Magistrate's Court in Kibera. He was sentenced to 3 years imprisonment. Being aggrieved by the decision, he lodged this Appeal.

When the Appeal came up for hearing on 6/12/04, the Appellant informed the Court that he was not challenging the conviction entered against him by the trial Court. However he was challenging only the sentence. He asked the Court to review the sentence by reducing it. He further submitted that he was remorseful for the offence and that he had learnt his lesson. He submitted that he was ready to work as a Community Educator with the Community Service Order. He also said that he had reformed.

**MR. MAKURA**, the learned counsel for the State, submitted that he had gone through the proceedings and the judgment and realized that the trial magistrate seemed to have disregarded the Appellant's mitigation. He was of the view that the said failure could explain why the Court gave the maximum sentence provided. He submitted that having served half the sentence, the Appellant could be considered to have learnt his lesson sufficiently. He submitted that he was not opposed to the appellant being considered to have served sufficient sentence.

I have perused the record of the proceedings before the trial Court. I have also considered the submissions by both the Appellant and **MR. MAKURA**. An appellate can interfere with the trial Courts exercise of discretion only in certain circumstances. In this case it has transpired that the learned trial magistrate meted out the maximum sentence provided in the law for such offence. I see no justification for such exercise of Court's discretion particularly where the facts and circumstances of the case are given due consideration. It is on record that the Appellant was a first offender. The offence was not aggravated in any way. The value of the items stolen were also a pittance. The learned trial magistrate meted out an excessive sentence in the circumstances of the offence. This Court is therefore, in those circumstances justified to interfere with the sentence. I have particularly considered the fact that the Appellant has served half of his sentence. I have also noted the fact that he appears to be remorseful for the offence

Having considered this Appeal I find that the appellant has served sufficient sentence for the offence he committed. I allow the Appeal by reducing the sentence to the period already served. The appellant should be set at liberty unless he is otherwise lawfully held.

Dated at Nairobi this 8th day of December 2004.

**LESIT**

**JUDGE**