

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.54 OF 2003

**(From original Conviction and Sentence in Criminal Case No.98
of 2003 of Senior Principal Magistrate Court at Nairobi)**

PETER GICHUKI WANGARE..... APPELLANT
VERSUS
REPUBLIC..... RESPONDENT

JUDGEMENT

The appellant filed an appeal challenging his sentence only for the offence of obtaining services dishonestly contrary to S.28 of the Kenya Communications Act 1998, the appellant who was the 1st accused in the original trial was sentenced to serve two years imprisonment without the option of a fine by El-Kindiy the principal Magistrate Nairobi. He has appealed against that sentence saying that it was too excessive. On count one which was pertaining the telecommunications plant contrary to section 32 (c) of the Kenya Communications Act 1998 the appellant was sentenced to a similar sentence. Mr. Ogetii for the state did not oppose the review of the sentence so as to give the appellant a non custodial sentence.

I have perused S.32 © of the Telecommunication Act. It provides for a fine of 10,000/= or to three years imprisonment both such fine and such imprisonment. S.28 of the same Act provides for a similar to penalty.

From my perusal of the record the appellant was a first offender. The trial magistrate has not indicated from his record why he preferred a custodial sentence yet the law provides for an option of a fine.

In my own considered view I would agree with both the appellant and the learned state counsel that trial magistrate was unnecessarily harsh on the appellant without any justification. I therefore review the sentence imposed on the appellant. Instead of serving two years imprisonment on each count the appellant will pay a fine of Ksh.30,000/= in default one year imprisonment on each count. Sentences will run concurrently.

Order accordingly.

R.M. MUTITU

JUDGE

21/2/2003

Delivered, dated and signed in open court in the presence of

Mr. Ogetii for the state and in the presence of the appellant.

R.M. MUTITU

JUDGE

21/2/2003