



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO.357OF 2002

**(From original conviction and sentence in Criminal
Case No.3199/2002 of the Principal Magistrate's
Court at NYAHURURU – D.K. NGOMO(P.M)**

ALICE WANJIRU GICHANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant's Counsel filed an application for bond pending appeal and a petition of appeal. The Appellant's advocate urged the court to admit the appeal instead so that he could argue it rather than the bond pending appeal which the Learned State Counsel did not oppose.

The ground in the appeal was that the plea was not unequivocal on reasons:-

- (1) That the charge against the Appellant was defective.
- (2) That the Appellant was not asked to plead to the facts of the case as put forward by the Prosecution and
- (3) That the Appellant was not given the services of an interpreter to the Kikuyu language which she understood.

That despite those reasons the court went ahead to convict the Appellant and to pass sentence.

The Learned State Counsel did not oppose the appeal against the conviction and concluded that the plea was not unequivocal.

I have carefully scanned through the proceedings conducted by the Lower Court and the charge facing the Appellant. The charge is defective and does not disclose an offence. Basic reason for this finding is that the Appellant was charged with the offence of Obtaining Money by False Pretences from an Institution. The charge of Obtaining contrary to S.313 of the Penal Code such as the one facing the Accused would not be constituted unless the alleged offence and the alleged obtaining is from a person. The offence of obtaining by false pretences is not an offence unless the alleged false pretence acts on the mind of a person causing them to take an action to their detriment. In the particulars of the charge against the Accused, the money is allegedly obtained from an Institution i.e. Kikuyu Sub- Branch Association. The Association is inanimate and has no mind of its own and is therefore perceived incapable of anything or

act.. There must have been a person from whom the money was obtained and that is the person whose name should have been included in the particulars of the charge.

The charge had also another defect in the particulars on the date(s) of the alleged offence. Each taking or obtaining constitutes a separate charge and offence. To charge the Appellant of obtaining on "diverse dates" as the charge reads was totally defective and the charge ought to have been rejected by the court for being duplex and also for not disclosing an offence.

I have also noted that the Appellant was not called to plead to the charge. That is however a secondary issue as the charge was totally defective and the Appellant ought not to have pleaded to it.

On these grounds I do find that the conviction entered against the Appellant in the court was illegal and unsafe and cannot be allowed to stand.

I allow the appeal by quashing the conviction and setting aside the sentence. I order that the Appellant be set at liberty unless she is otherwise lawfully held.

Orders accordingly.

Dated and Delivered at Nakuru this 18th day of February. 2003.

JESSIE LESIIT

JUDGE