

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
CRIMINAL CASE NO.972 OF 2002**
(From Original Conviction and Sentence in Criminal Case
No.2046 of 1999 of the Chief Magistrate's Court at Nairobi)

GABRIEL NJOROGE MBUTHIA..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

The appellant in this case preferred an appeal against both conviction and sentence against the judgment of the chief magistrate Nairobi one Mr. Boaz Olao Esquire. The appellant was sentenced to 2 ½ years imprisonment on a charge of obtaining money by false pretence contrary to section 313 of the Penal Code. The particulars are that on diverse days between the 20th day of May 1988 and 7th September 1988 at New Pub Towers along Uhuru Highway Nairobi, within Nairobi area, jointly with others not before the Court with an intent to defraud obtained Ksh.17400000/= from Mike Maina by falsely pretending that the accused and three others were in a position to sell to the said Mike Maina a plot No.LR No.23917 deed plan No.218858 Kayole (Fr No.342/50).

The appellant appeared in person also filed his grounds of charges too.

The appellant has also submitted that the sentenced of 2 ½ years imprisonment was too harsh to him and prays that he be given an alternative sentence if his appeal will not succeed. The appellant has argued that he is sickly and produced a medical report in support of his appeal. Miss Nyamosi for the state opposed the appeal and argued that the evidence adduced proved that all the ingredients of the offence is that the appellant made a representation, which was false and that the said representation was intended to defraud the complainant.

I have considered the evidence on record very carefully. There is no doubt from the evidence on record that P.W.1 was approached by the appellant to buy a plot. The appellant made P.W.1 believe that he was the owner of the same and that he worked with the City Council. The appellant negotiated the piece of the plot with P.W.1. Acting on the appellant's representation P.W.1 paid the sum on issue only to discover that the appellant was not the owner of the plot but the City Council. He also discovered that the appellant did not work for the City Council. If the appellant had not obtained any money from P.W.1, the appellant would not have ran away to Uganda nor would have offered to repay the money. From my close perusal of the proceedings I am not satisfied that this appeal has any merits. The fact that the charges of forgery failed does not necessary mean that the obtaining charges should fail as argued by the appellant I dismiss the appellants appeal against conviction accordingly.

As concerns sentence, I am of the view that given the appellant's current health there is need and the fact that he was a first offender, there is need to review his sentence. I therefore reduce the appellants jail sentence to one of twelve months imprisonment.

R.M. MUTITU

JUDGE

10/4/2003

Delivered dated and signed in open court in the presence of Miss Nyamosi for the state and in the presence of the appellant.

R.M. MUTITU

JUDGE

10/34/2003