



**REPUBLIC OF KENYA**

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

**CRIMINAL APPLICATION NO 114 OF 2002**

**EMMANUEL KOGWE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The applicant Kongwe Emmanuel first appeared in the Lower court on 27th March, 2001 charged with the offence of obtaining money by false pretences C/s 313 of the penal Code.

The record shows that the applicant is a foreigner and despite having been granted bond, he has remained in custody presumably because he has not been able to find a Kenyan Surety.

It is coming to almost 11 months now since the applicant first appeared in court but the hearing has not commenced.

There is now before me an application by the applicant complaining of inordinate delay and seeking orders that an expeditious hearing be ordered or that he be released unconditionally for lack of evidence.

I called for the original record which I have perused. The case has come up for hearing on several occasions. However the record is wanting as to what transpired on those days. The prosecutor is not shown as having any issue including the presence or otherwise of the witnesses.

The court made orders for further hearing dates without any comments whatsoever, with profound respect that is deplorable and disgraceful.

There are provisions in the criminal procedure code which ought to have been involved by the lower court to ensure that justice may not only be done but be seen to be done. This, the lower court did not do.

I have noted that the next hearing date is 8th March, 2002. For now I shall not make any orders relating to the propriety of the proceedings so far. I shall only direct that the case proceeds as scheduled on the said date and the trial court to invoke the relevant provisions of the Criminal Procedure Code in the event of non-availability of witnesses.

To ensure that no further delay is entertained, this application shall be mentioned again on 12th march, 2002 for further orders.

It is so ordered.

Dated and delivered at Nairobi this 19th day of February, 2002

**A. MBOGHOLI MSAGHA**

**JUDGE**