



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.461 OF 2000

JOTHAM UHURU BHISUCHE APPELLANT

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.462 OF 2000

MARTIN WAFULA WANYAMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(Being appeals from Original Conviction and Sentence in Criminal cases
No.407 & 409 of 2000 of Snr. Resident Magistrate's Court at Voi –E.N.
Maina –SRM)**

J U D G M E N T

These two appeals came up for hearing together. Appellants had been jointly charged with 10 counts under Section 382(1) 313 and 389 of the Penal Code before the SRM's Court Voi.

The charges were:-

Counts 1, 3, 5, 7 and 9 Personation contrary to Section 382(1) of the Penal Code

Counts 2, 4 and 6 – obtaining money by false pretences
contrary to Section 313 of the Penal Code and ,

Counts 8 and 10 – Attempted obtaining money by false
pretences contrary to Section 313/389 of the Penal Code.

They were both convicted and sentenced various terms of imprisonment for each count respectively.

Count I - each to serve 2 years imprisonment.

Count II - each to serve 3 years imprisonment

Count III - each to serve 2 years imprisonment

Count IV - each to serve 3 years imprisonment

Count V - each to serve 2 years imprisonment

Count VI - each to serve 3 years imprisonment

Count VII each to serve 2 years imprisonment

Count VIII each to serve 1 year imprisonment

Count IX each to serve 2 years imprisonment

Count X each to serve 1 year imprisonment

The sentences to run concurrently.

The are now before this court on appeal against their convictions and sentences. The first appellant relied on the grounds he has submitted and challenged his conviction and sentence. He denied committing the offence but instead accused the police of stealing from him a sum of USA dollars \$4000 (equivalent of about 320,000/-) at the time of his arrest. His coappellant preferred to leave the talking to his buddy.

The particulars etc –

“The accused persons posing as employees of Coastal Bottlers – the Manufacturers of Coca Cola visited several traders within Taita/Taveta on the pretext that they could supply them with Coca Cola Fridges. The Court heard that on 24/4/2000 the 2 accused persons went to the shop of PW.5 and found him with his wife PW.6. They introduced themselves as employees of Coastal Bottlers and told him they were in a position to supply him with a branded fridge. He was however required to complete some forms and pay a deposit of 1,000/- and also to provide 2 passport size photographs. They duly completed the forms, gave them 1,000/- and a copy of his I?D and left promising to bring the fridge”.

The next day, on 25th April, 2000 the two appellants again presented themselves as employees of Coastal Bottlers and similarly obtained Shs.1,000/- from him on the pretext that they could supply him with a fridge. This was repeated to PW.2 at her Canteen at the GK Prison Voi – and here PW.4, a brother to

PW.2 testified that he witnessed them fill the forms for the complainant and saw 1,000/- change hands. On 4/5/2000, the appellants were at Maktau and went through their criminal routine except that the victim PW.3 was unable to raise 1,000/-, not even Shs.200/- they subsequently requested. The complainant was unmoved and told them she would only pay when the fridge was delivered. By this time word had reached the actual employee of Coastal Bottlers in the District PW.9 of what was happening. He took the necessary steps to alert the traders and requested their assistance and so on 5/5/2000 when the two appellants continued their mission and visited PW.8's shop at Mwatate, he asked them to go and return later. When they did so he called the District Coca Cola representative at Voi. As this was happening the two appellants were at the adjacent shop of PW.7 completing the forms and asking for 1000/- from her. She promised to pay them on delivery of the fridge. Now back to PW.8's shop to complete the deal, the appellants were apprehended by PW.9 with the help of the members of Public and taken to the Coca Cola Depot. PW.9 called CID officers who later took them to Voi Police Station and the appellants were finally charged.

The trial court found that the appellants had been identified by all the complainants whose evidence was properly corroborated. The Court also found that their evidence against the 2 appellants was overwhelming and that their defence given in unsworn statements not convincing. The State Counsel in opposing the appeal described their defence as a sham. The Prosecution, he said had clearly established and proved their case without a shadow or doubt. Mens Rea had been established as the appellants had, with knowledge embarked on and carried out systematically a mission of fraud and deception. I have no intention of falling into that. I agree with the lower court's verdict and uphold the conviction.

The appeal is dismissed and as to their sentences, I agree with the sentiments of the State Counsel that the appellants have not complained about them, and since the trial court was rather lenient, I see no reason to review them. The appellants will serve the sentences of imprisonment as imposed by the lower court.

Dated at Mombasa this Day of, 2002.

L.P. OUNA

JUDGE