



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 32 OF 2001

From original Conviction (s) and sentence (s) in Criminal Case No.
1225 of 2000 of the Chief Magistrate's Court at Nairobi

MICHAEL OKELO MISURE.....RESPONDENT

VERSUS

REPUBLIC.....APPLICANT

J U D G M E N T

The appellant Michael Okello Misure was convicted of three counts of obtaining money by false pretences c/s 313 of eh Penal code. On each of the three counts he was sentenced to serve two years imprisonment. Sentences were ordered to run concurrently.

Being aggrieved by the said conviction and sentence he lodged an appeal. As required of me I have made an independent evaluation of the record before me before arriving at the findings hereinunder.

There is evidence adduced by Pw1, Pw2 and Pw3 that, the appellant was working for the United Nations San Diego, California and was in the country on official duties. To Pw1 and Pw3 he offered to help them secure jobs with the United Nations. To Pw2 he offered to help him further his religious studies and obtain financial assistance to construct a church at Kitengela.

To facilitate the assistance, the appellant allegedly asked all the three complainants to variously pay some money to obtain passports, Pin Numbers, Certificates of good conduct etc. the total amount paid by cash complainant is as reflected in the charge sheet.

At most encounters between the complainants and the appellant there was present a lady by the name Alice Masaa Nyamu, Pw4 who was a friend of the appellant. She heard the promises made by the appellant to the complainants and saw money change hands.

The promises and assistance that the appellant offered never came into fruition. A report was made to the police and he was arrested. He pleaded with the complainants not to press the charges and promised to refund the money obtained but this did not materialize.

On his part the appellant denied the offences. He said he only knew Pw2 and Pw3 as friends of Alice but never made any offers as alleged. He never told any of the complainants that he worked for the United Nations or that he was going to get them jobs there. He appeared to attribute his was to sour relations between him and his girlfriend Alice.

It is true that there was nothing in writing to prove that the appellant received any money from the

complainants. With respect however no document was needed to believe that the transaction took place.

The evidence of the prosecution witnesses was consistent and corroborative. The conversation and Exchange of money was witnessed by pw4 who was a friend of the appellant. The police investigating officer confirmed that the appellant was not an employee of the United Nations. He the appellant never fulfilled the promises he made to the complainants yet he had received the money he had asked for from each one of them. He chose his victims well. They were desperate and vulnerable. It was easy to win their confidence. This he did only to turn out that nothing would be forthcoming.

All the complainants had not known the appellant before. They had nothing to gain by implicating him. Pw4 though his girlfriend was truthful to the court and there was nothing to suggest that she had a grudge with him. All the prosecution witnesses withstood rigorous cross examination by the appellant. I have no doubt they told the court the truth. The defence of the appellant could not withstand the weight of the prosecution case. It was rightly rejected by the learned trial magistrate.

On sentence, the appellant had a previous conviction which was relevant. He admitted the record. The sentence imposed cannot be said to be harsh.

The end result is that this appeal is hereby dismissed. Order accordingly.

Dated and delivered at Nairobi this 17th day of April, 2002.

A. MBOGHOLI MSAGHA

JUDGE

Mr Obuor for the state

Appellant in person