



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.128 OF 2001**

(Being an appeal from Original Conviction and Sentence in Criminal Case No.2765 of 2000 of the Chief Magistrate's court at Mombasa – A.W. Ngugi,RM)

DESTA MULEGEKI ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

The Appellant Desta Mulegeki was charged in the lower court with the offence of obtaining by false pretences contrary to Section 313 of the Penal Code on two counts and a third of making documents without authority contrary to Section 387(a) of the Penal Code. There was a 4th count of being unlawfully in Kenya contrary to Section 13(2) of Immigration Act Cap.17 Laws of Kenya

The appeal on the 4th count is not supported by the State Counsel and the same is allowed. I shall say no more of it. This leaves for hearing the appeals on the other 3 counts. The provisions under Section 313 of the Penal Code states as follows:

“Any person who by false pretence and with intent to defraud detains from any other person anything capable of being stolen or instructs any other to deliver to any person anything capable of being stolen is guilty .....

The evidence supporting the charge is of PW.1 who stated that he resides at Buxton in Mombasa and works at Swaminirayan Academy as a teacher. On 19.9.2000 he was requested to show school guest around the school. The guest was the appellant who had on him a pilot uniform. The appellant said that he was a Chief Pilot of United Nation Evergreen International Ailine0. On this issue the appellant said he was a licensed long distance pilot. He works for Tract as Relief Agency. He was also a member of International Pilot Association UK and that he was a pilot based at Malindi Airport. PW.1 after being recalled said that on that day the appellant was dressed in a blue shirt, with Navy uniform, navy long trouser, two shoulder badges and a new tie. This appears to be what the witness described as pilot uniform.

Further evidence shows that the appellant signed visitors book at this institution. No effort was made by the prosecution to produce this visitors book in evidence for the court to read exactly what the appellant wrote. PW.1 asked whether they (at United Nations Evergreen International had a job. The appellant said he is a director and he would offer him a job. The witness PW.1 wrote immediately applying for the job of a steward. The letter was acknowledged by a Captain Alister Sparks. PW.1 said that he was offered 6 chances for employment which he gave to his relatives and friends. The appellant was to send the complainants to South Africa for training and

he requested some money for securing passports. The complainant also gave some photocopy certificates, CVs and other documents. Within a short period of time the complainants got suspicious and reported the matter to the police. PW.8 visited the house of Appellant at Bakarani and carried out a search. Several

items were found as listed at page 17 & 18 of the record. The accused denied these charges. However it is to be noted that on the first day in court he pleaded guilty to all charges but he says a Mr. Mureithi "pleaded" with him to change the plea to that of not guilty. This indicates that he was aware of the unlawful things he had done and his subsequent denial and the stories he gave were confused and untrue and the change of plea was not genuine. He does not deny receiving the money. The allegations that he was piloting his father's plane and that his father was a Minister in South Africa Government are false. He had altered a certificate of PW.1 to read as it was his own. He produced letter from regional Air Services signed by Captain Dester Mulegeki. Evidence was produced that neither the appellant nor a captain Alistair Sparks were employed by Regional Air Services. This evidence comes out clearly through PW.5 Grace Nyokabi who stated that the appellant was her neighbour at Bakarani PW.8 C.P. David Khanandi searched the Appellant's home in Bakarani. The witness confirmed that the appellant's name appeared in police O.B. (Occurrence Book) twice, and the complaint that the appellant report was not recorded is untrue.

In light of what I have stated I find the grounds of appeal without merit. There is no required that under Section 313 Penal Code evidence must be corroborated but all the same evidence produced by prosecution is overwhelming. No objections were taken at the trial to the production of

photocopies of evidence. In any case the evidence is that the witness had given photocopies to the appellant.

The trial magistrate maintained her professional stand on the whole trial despite the distraction by appellant and she did conduct the trial with impartiality demanded by her profession. The allegation that she was ultra biased are false.

After considering all the record, I am convinced that the appellant committed the offences he is charged with and that the prosecution evidence was sufficient to prove the case beyond reasonable doubt. I find no reason to interfere with the conviction or sentence. However as the State concedes appeal on count IV I allow the appeal on the count and set aside sentence.

The conviction and sentences on counts 1, 2, 3 are hereby confirmed except that since the offences arose from similar activities. The sentences shall run concurrently not consecutively except that since the offence arose from similar activities the sentence shall run concurrently not consecutively. Dated at Mombasa this 16th Day of May, 2002.

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**