

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO. E036 OF 2021

ISAAC MULA JACOB.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Introduction.

1. The appellant Isaack Mulaa Jacob appealed against the sentence in Mombasa Chief Magistrate's Court Criminal Case No. 262 of 2019 where he was charged with the offence of obtaining money by false pretence contrary to section 313 of the Penal Code.
2. The particulars to the said charge was that on the 24th day of October, 2018 in Mombasa County in the Republic of Kenya, with intent to defraud, obtained from Mathew Mwangi Nyambura, the sum of Kenya Shillings, Two Hundred and Fifty-Four Thousand by falsely pretending that he was in a position to facilitate the clearance of Motor Vehicle Chassis No. NCP8T-5135178 make Toyota Sienta from Mombasa container Terminal CFS, a fact we know to be false.
3. The appellant was sentenced to pay a fine of Kshs. 250,000/= in default to serve a sentence of 3 years' imprisonment. By an application dated 18th May, 2021, the appellant applied to be released on bond pending appeal and the Respondents filed grounds of opposition.
4. I have considered the application. The appellant's grounds of appeal are that the trial Magistrate erred in Law and fact in meting out a sentence that was harsh and excessive in the circumstances and that the trial Magistrate failed to take into account his mitigation. I do find that the reasons given are not those that can make this Court conclude that the appellant's appeal has chances of success.
5. In the circumstances, the application is dismissed. This appeal is hereby admitted for hearing by way of written submissions. The appellant will have fourteen (14) days to file and serve written submissions. Upon service, the Respondent will also have fourteen (14) days to file and serve written submissions. Mention on 4th October, 2021 for directions.

It is so ordered. Notice to issue to appellant and counsel.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 17TH DAY OF SEPTEMBER, 2021

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HON. LADY JUSTICE A. ONG'INJO

JUDGE