REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 2 OF 2009

ZEPHANIAH OMAE ORENGE ……..…..……..…… APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original conviction and sentence imposed by the Court Martial on the 2nd July 2009 at Moi Air Base Barracks Nairobi against No. 103421 SGT: Zephaniah Omae Orenge)

JUDGMENT

The appellant was charged and convicted by a Court Martial held at Moi Air Base Barracks for committing a civil offence contrary to Section 69 (I) of the Armed Forces Act, Chapter 199, Laws of Kenya, that is to say, five counts of obtaining money by false pretences Contrary to Section 313 of the Penal Code Chapter 63, Laws of Kenya. In total, he was being accused of obtaining a total sum of Kshs 400,000/=.

Particulars of each of the charges were;

Charge One: That on 4th September 2008 at Nairobi, with intent to defraud, obtained from Dominic Omboga Momanyi Kshs 100,000/= by falsely pretending that he would influence and secure the recruitment of the said Dominic Omboga Momanyi into the Armed Forces.

Charge two: That on 1st October 2008 at Nairobi with intent to defraud, obtained from Dominic Omboga Momanyi Kshs 15,000/= by false pretending that he would influence and secure the recruitment of the said Dominic Omboga Momanyi into the Armed Forces.

Charge three: That on 4th October 2008 at Nairobi, with intent to defraud, obtained from Dominic Omboga Momanyi Kshs 85,000/= by falsely pretending that he would influence and secure the recruitment of the said Dominic Omboga Momanyi into the Armed Forces.

Charge four: That on 8th October 2009 at Nairobi, with intent to defraud,

obtained from John Gisemba Moturi Kshs 100,000/= by falsely pretending that he would influence and secure the recruitment of the said John Gisemba Moturi into the Armed Forces.

Charge five: That on 8th October 2009 at Nairobi, with intent to defraud, obtained from Patrick Maranga Mogaka Kshs 100,000/= by falsely pretending that he would influence and secure the recruitment of the said Patrick Maranga into the Armed Forces.

He was acquitted in count I and convicted and sentenced in all the other four charges as follows:-

- In Charge two he was sentenced to reduction in rank to private subject to confirmation.
- In Charge three he was sentenced to imprisonment for 18 months and dismissed from the Armed Forces.
- In charge four he was sentenced to imprisonment for 12 months and;
- In charge five he was sentenced to imprisonment for 12 months with the sentences to run concurrently.

Aggrieved by the conviction and sentence, the Appellant has appealed to the High Court based on 24 grounds particularized his Petition of Appeal filed on 27th October 2009. These grounds can be condensed into 8 grounds as follows:

1. **Whether the Court Martial had jurisdiction to hear and try cases charged under the Penal Code, Cap 63, Laws of Kenya.**
2. **Whether the evidence of the prosecution was contradictory, inconsistent and credit-worthy.**
3. **Whether the Appellant was unlawfully delayed in being taken before the Court Martial in breach of the Armed Forces Rules of Procedure.**
4. **Whether the Court Martial disregarded the evidence of the defence.**
5. **Whether the charges as drafted were defective.**
6. **Whether it was procedural to allow the prosecution to adduce evidence after the Appellant had been put on his defence.**
7. **Whether the Court Martial was impartial in allowing the prosecution to edit proceedings without according the defence a similar opportunity.**
8. **Whether the sentence meted against the Appellant was harsh and imposed twice against the Law.**

During his submissions in court, counsel for the Appellant consolidated the grounds and the same shall be addressed as condensed in the above grounds of appeal.

The facts of this case are that **PW1** who is the complainant in counts number 1-3 testified that on the 19th day of August 2008 he received a call from PW3 a relative of his by the name Josephine Momanyi. PW3 called and informed him of an ongoing recruitment exercise into the armed forces in Nairobi. She told him to make arrangements to proceed to Nairobi from Kisii which he did. Upon arrival in Nairobi on 4th September 2008 he met and was introduced to one Zephaniah Omae Orenge at a hotel in Pangani a few meters from the junction of Thika Road. After introduction the accused told him that he was in a position to have him recruited into the Armed Forces. To facilitate this he asked for a sum of Kshs 100,000/= towards the said recruitment and said that he was among the senior officers conducting the exercise. In the company of one Peter and Gicheru they proceeded to Equity bank Pangani where he withdrew some Kshs 93,000/= and added Kshs 7,000/= cash to total to Kshs 100,000/= which money he handed over to the accused whilst in the company of Josephine Osiebe PW3. PW1 showed the court his bank statement from Equity Bank showing the withdrawals done on 4 September 2008.

While waiting for the recruitment, he made a follow up of the accused who told him that he was in a position to have him recruited as a Cadet Officer but this time around some additional Kshs 100,000/= would be needed. He contacted his relatives and one Daniel Adonija came to his aid on 1st October 2008. Some Kshs 15,000/= was sent to the accused through M-pesa and on 12th October 2008. Another

relative Benecha Adonija transferred some of Kshs 85,000/= to the accused account. The accused confirmed with PW1 that he had received the said amount and urged him to expect to be called for the recruitment at any time but this did not happen. When he contacted the Appellant, the Appellant told him that he would get a bank loan and refund him the money. He however refused to refund him the money and PW1 proceeded to Pangani Police Station to report the matter but was advised to report at the Department of Defense headquarters which he did.

PW2 James Muigai was a banker who at the time worked at Equity Bank Moi Avenue Branch as the Operations Manager. He produced and confirmed the contents of the bank statement for the complainant Dominic Omboga Momanyi which was marked as MFI 1 in respect of account number 0520191054444 from 1st September 2008 to 29th September 2008. The statement was produced in court as exhibit 4 and 4 (a).

PW3 Josephine Osembe Momanyi testified that on 19th August 2008 she learnt about the recruitment of the armed forces officers that was scheduled to take place through her cousin who works at the Prison in Migori and immediately informed her nephew. She consulted with her cousin who said he knew a soldier one Zephaniah Omae Orenge who worked with the Armed Forces and was in a position to help in recruiting her nephew and brother into the Armed forces.

She contacted Mr. Zephaniah and they organized to meet. On 4th September, 2008 she travelled to Nairobi with her nephew Dominic Momanyi and met Zephaniah Omae Orenge in a hotel in Pangani. The Appellant explained to them that they had to pay a sum of Kshs. 100,000/= to be recruited in the armed forces. He also told them that he was among the recruiting officers in the Armed forces and was in a position to recruit the complainant in the Armed forces.

PW4 testified that it was him who deposited Kshs.85,000/= into the Appellant's account money which was meant to assist his nephew to gain employment into the army. PW4 supported PW1's testimony that PW1 gave him the appellant's account number so that he could deposit the Kshs.85,000/=. Documents from Safaricom to prove MPESA transaction and bank the transaction were tendered in to support the testimony of the witnesses. In a nutshell the prosecution proved that PW1 gave the Appellant Kshs. 200,000/=.

PW6 who was the complainant in charge 4 gave an account of how his parents sent him the sum of Ksh. 100 000/ which he withdrew from his bank account and later gave it to the Appellant who in turn would use it to secure him employment with the Administration Police. He handed over the money to the Appellant in the presence of Eric Nyarodi [PW 9] and Goeffrey Maraga Barasa. He also showed the court the bank cash withdrawal slip.

PW7 the complainant in charge 5 gave a detailed account of how they were duped by the appellant by pretending that he could get them employment into the Administration Police. He was introduced to the Appellant by his aunt with information that he would help him secure the job. He travelled to Nairobi where he handed the sum of Ksh.100,000/ to the Appellant for the purpose. He showed the court the Western Union money transaction slips via which he withdrew the cash. He delivered it to the Appellant along Tom Mboya Street in Nairobi.

PW8 corroborated the testimony that PW6 and PW7 gave Kshs.200,000/= to the Appellant. He stated in his testimony at pages 134 lines 1-3 that he witnessed the handing of the money in envelopes containing Kshs.100,000/= each from PW6 and PW7 respectively.

PW9 also testified that he accompanied his cousin Jackson to meet the Appellant and withdraw money from the bank which they handed over to the Appellant. He withdrew Kshs. 100,000/=, while another relative by the name Patrick (PW7) who joined them also withdrew Kshs. 100,000/= which they counted at the bomb blast site, placed it in envelopes and handed over to the appellant at the same site.

PW10 produced a certified copy of the Appellant's bank account at Equity Bank in court. He confirmed that a transfer indeed took place on 4th October 2008 from Nyamira Equity Bank to the Appellant's

account number 0320192444199 of Kshs. 85,000/=. The money was from one Benecha Adonija Daniel.

PW11 was informed by his colleague Senior Private Nyarodia how one Maranga had approached the appellant in search for assistance to join the armed forces. The appellant agreed to assist him and another gentleman by the name John. They however did not get assistance and having parted with some money they decided to lodge a complaint with PW11 who summoned the appellant to his office in their presence. When he came, he said he knew them and they even spoke in their mother tongue. They each alleged they had given him Kshs. 100,000/= to assist them. PW11 then reported the matter to the commanding officer and Investigation. Thereafter, the appellant went missing until he was apprehended.

PW12 investigated the case and prepared a report which was however removed from the record for non-compliance. He testified that the appellant agreed to pay back the money he took from the complainants on 8th December 2008 which he did not. He established from his investigation that the appellant had been given money for purposes of securing recruitment for the complainants which he did not.

PW13 took the court through the elaborate recruiting procedure in the armed forces. He testified that the appellant was not part of the recruiting team. He testified that their advertisements inviting persons interested to join the armed forces were accompanied by a caution against any form of corruption or soliciting bribes in the hope that they would be recruited.

PW14 was tasked to receive statements from the complainants, exhibits and other relevant documents to the case, after which he compiled an abstract evidence and forwarded to his commanding officer. The abstract evidence was produced in court as exhibit 10.

In his submissions before us, Ms. Kule Wario Counsel for the State opposed the appeal and filed written submissions in response. We shall now proceed to examine each of the grounds of appeal as canvassed by both counsel in their written submissions and arrive at our own independent findings.

1. <u>Does the Court Martial have Jurisdiction to hear offences under the Penal Code (Cap 63)?</u>

The Appellant's Counsel argued that the Court Martial misdirected itself in not appreciating that it had no jurisdiction to hear offences under the Penal Code, (Cap 63), Laws of Kenya. That to say, that it cannot try a person for any offences which do not have any corresponding punishments under the Armed Forces Act. He noted that Section 69(1) of the Armed Forces Act under which the charges were framed does not provide the punishment that would be imposed upon conviction. Counsel for the State on his part cited Section 2 of the Armed Forces Act (Cap 199) that a civil offence meant an offence under Part XVI or an offence under some written law other than this Act, or an act or omission which if committed in Kenya would constitute such an offence.

Under the interpretations section of the Armed Forces Act (Cap 199) **"civil court**" means a court of ordinary criminal jurisdiction; while a **"civil offence**" means an offence under Part XVI or an offence under some written law other than this Act, or an act or omission which if committed in Kenya would constitute such an offence;

Part XVI of the Act does not provide for the offence of obtaining by false pretences. However, Section 2 of the Act ensures that the Court Martial has jurisdiction to hear and determine an offence under some written law and in the instant case, obtaining by false pretence falls within the ambit of "under some written law" specifically Section 313 of the Penal Code (Cap 63) Laws of Kenya. We are also in agreement that Section 69 of the Armed Forces Act is indeed an enabling provision to the charge of obtaining by false pretence.

We wish to duplicate Section 69 (1) of the Act for purposes of a better understanding of its application. The same provides as under:

> ***Any person subject to this Act who commits a civil offence, whether in Kenya or elsewhere, shall be guilty of an offence and on conviction by Court Martial***

a. ***If the civil offence is treason or murder, shall be sentenced to death; and***
b. ***In any other case, shall be liable to any punishment which a civil court could award for the civil offence if committed in Kenya, being one or more of the punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is provided by the act.***

Provided that, where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than dismissal from the Armed Forces, as is provided by the Act."

Our understanding of the above provision is that it is the foundation on which civil offences are tried under other laws other than the Armed Forces Act, of which offences under the Penal Code are some of them. Furthermore, Sub-Section (b) vests the Court Martial with powers to mete punishment which a Civil Court could impose for the civil offence if committed in Kenya. We thus find that the Court Martial had jurisdiction to hear the matter and was right in pronouncing itself as such.

2. <u>Was the evidence of the prosecution contradictory, inconsistent and credit-worthy?</u>

In considering this issue, we shall condense grounds 2, 17 & 18 as they all touch on the weight of the evidence. Under ground 2, the Appellant argued that PW3 had stated that he was with PW1 and did not know the hotel at Pangani where the alleged money was purportedly given. He also alleged that PW1 stated that he did not properly describe the clothes the accused was wearing. We have noted that whereas PW3 stated that he did not know the specific hotel at Pangani where she met the accused person she volunteered to take investigators there should the need to do so arise. Regarding her testimony on the accused's attire, it is clear at page 72 of the proceedings that PW3 described the accused's Jacket as "***Darkish in color***" while she could not remember the shirt and trouser he wore. PW1 on the other hand testified at page 49 of the proceedings that the accused was dressed in a long trouser blue in color, plus a short sleeved shirt somehow grey with stripes. Whereas we agree that PW1 in particular did not describe the Jacket the Appellant wore, each of the witnesses described an item which the other did not. They thus complemented each other which, of itself, cannot be regarded as a contradiction.

The second contradiction alleged by the appellant was that although PW1 in evidence said that he sent the accused Kshs. 15,000/=, his statement of the same date showed he sent Kshs. 15,160/= whilst in the charge sheet the accused is charged with having obtained Kshs. 15,000/=. PW1 explained that the difference of Kshs. 150/= was the withdrawal charge, which reflected on the MPESA transaction statement he read in court, which we uphold as sufficient explanation.

Further, the Appellant argued that the charge against the accused person in count 3 of obtaining Kshs. 85,000/= from one Daniel Omboga Momanyi through false pretences flew in the face of his evidence at page 41 of the proceedings where he alleged that the money was purportedly sent by one Benecha Daniel to the Appellant's account allegedly at Equity Bank at Kariobangi Branch. The record at page 41 however is clear that PW1 had requested for financial assistance from his relative Benecha Daniel who promised to assist him and on 4th October 2008 he transferred Kshs. 85,000/= to the bank of account name of Zephaniah Omae Orenge, account number 0320192444199. PW1 was present at the time the transaction was done. His evidence was first hand and not outsourced. We uphold it entirely.

The Appellant also invited the Court to consider the evidence of PW2 where the witness presented a statement that was totally irrelevant to the evidence he was giving and which the court he urged strangely accepted as evidence. We have noted that PW2 produced a statement purported to be the Appellant's statement of account which had nothing to do with the transaction referred to by PW2. It was thus irrelevant to the evidence PW2 gave.

The other contradiction was pointed at from the evidence of PW6, 7, 8 and 9 with respect to where the money was given. PW6, PW7, PW8 and PW9 claimed the Appellant received money in a garden near the Co-operative Bank on Haile Selassie Avenue, while other witnesses claimed they handed the money to the Appellant at the Railways roundabout or along Tom Mboya Street close to Afya Centre.

In principle, all the witnesses talked of or described a central point where they seem to have met or had been moving towards in the process of executing their criminal transaction and conveying the money to the Appellant i.e between Co-operative house and Tom Mboya Street both of which were separated by the roundabout at Railways. We are unable to find that these minor contradictions negate the evidence that the Appellant received the money.

3. <u>Was the appellant unlawfully delayed in being brought before the Court Martial in breach of the Armed forces Rules of procedure?</u>

In the Appellant's ground 5 which he amalgamated with grounds 6, 7 and 9, he argued that the Court Martial misdirected itself in failing to find that the Appellant was unlawfully delayed in being brought before his Commanding Officer contrary to the Armed Forces Rules of Procedure. He argued that after arrest he should have been brought to the commanding officer within 48 hours of his arrest according to Section 3 of the Armed Forces Rules of Procedure. Instead, he was arrested on 16th December, 2008 and put in close arrest at DOD for more than 23 days before he was brought to Moi Airbase where his Commanding Officer was. During this period he argued that no report was produced at the Court Martial proceedings explaining the delay as expected.

In response the prosecution objected to the application on the basis that it had already closed its case but was ready to avail documentary evidence to explain the delay. The Court decided to allow the prosecution to avail documentary evidence explaining the delay. From the record it is clear that the prosecution produced the said documents in court with the leave of the court. These were original copies of the eight days delay reports from the 31st December 2008 when the appellant was first arrested to 13th March 2009. The Prosecution urged that a proper procedure was indeed followed in bringing the appellant to court and that the eight days delay report had been faithfully and dutifully remitted to the service commander from 31st December to 13th March 2009.

Section 72 of the Armed Forces Act and Rule 6 of the Armed Forces Rules of Procedure and Articles 47(1) and 50(2)(e) of the Constitution provide for the right to expeditious, efficient, lawful and reasonable administration of justice as well as the right to have the trial begin and conclude without unreasonable delay. The appellant alleged that he was held for 197 days which translated to 7 months and 9 days which was in breach of his constitutional rights and the statutory period allowed of 72 days under the Armed Forces Act before being charged.

The only exception to this duration under Rule 6 of the Armed Forces Act is if reasons are given in writing by the responsible officer. The said Rule 6 of the Armed Forces Rules of Procedure provides that:-

> ***"An accused shall not be held in arrest for more than seventy-two consecutive days without a court martial being convened for his trial, unless the officer who would be responsible for convening the court martial directs in writing that he shall not be released from arrest; and when giving such a direction the officer shall state his reasons for giving it."***

The question is whether any reasons were stated in writing for the delay. We have perused the record from pages 236 to 248 where the application against the unlawful detention of the accused person and submissions on the same were made by both counsel for the Appellant and Respondent as well as the content of the ruling that was delivered by the Court Martial on Tuesday 23rd June 2009. We find that reasons for the delay were indeed advanced in court and documentary evidence availed to counsel. The court in rejecting the application found that the proper procedure as provided for in Rule 3 to 6 (on the avoidance of delay) of the Armed Forces procedure rules had been followed. On the belated application the court noted the same should have been made at the time when the accused person was arraigned in court in keeping with Rules 34, 35, 36 and 37 of the Armed Forces Procedure Rules. We hold and find that the Court was right in rejecting the Appellant's application.

4. <u>Did the Court Martial consider the evidence of the prosecution and disregard that of the defense?</u>

The appellant consolidated Grounds 10, 11 and 12 and urged that the Court Martial misdirected itself in not considering the evidence of the Prosecution while disregarding that of the defence, partially giving considerations to the submissions of the Prosecution without giving the same weight to that of the defence and was not impartial in its interlocutory rulings and judgment. Counsel for the Appellant cited page 28 of the proceedings where he observed the Court Martial erroneously ruled that the Army as an institution had the discretion to charge civil offenders in Court Martial or in civil Courts, which ruling he argued had no basis in law. We have already addressed ourselves on this issue and we need not belabor on it any further. Counsel for the Defense also submitted that the Court Martial further erred in refusing to provide them with a typed ruling to challenge its ruling in the High Court which was a flagrant contravention of the Appellant's right of appeal against its decision.

We have looked at the record and more specifically at pages 28 to 29 of the proceedings where the court declined this application and gave its reason for doing so. The court advised the appellant's Counsel that the best procedure was for him to seek leave of the High Court to stop the proceedings at the Court Martial which advise he did not follow. In our view, although the ruling was not provided to the Appellant, having settled the issue on the jurisdiction of the Court Martial in this judgment, we hold that no prejudice was occasioned to the Appellant

5. <u>Were the charges as drafted in the charge sheet defective?</u>

The appellant contended that in Grounds 13, 14, 15 and 16, the Court Martial failed to objectively uphold that the charges were defective for want of jurisdiction. He also urged that the sum total of the charges were contradictory having stated that the Appellant received Kshs.400,000/= while the evidence alleged he received Kshs.400,160. His contention here in our view seems to be the disparity in the accuracy or clarity of the total sum of money involved in this offence. This was properly explained vide the M-pesa transaction of Kshs. 15,160/= of which Kshs.160 was the fee to Safaricom for the transaction. This discrepancy did not render counts 2 and 3 defective. It neither vitiated the strong evidence in proof of the two charges.

6. <u>Was it procedural to allow the Prosecution to adduce evidence after the appellant had been put on his defense?</u>

The appellant abated Grounds 19, 21 and 22. In Ground 20 however he urged that the Court Martial unprocedurally allowed the Prosecution to adduce evidence in their favour after the Appellant had been put on his defense without any legal basis. This, the Appellant argued showed partiality or bias on the part of the Court and disregarded rules of procedure contrary to Section 306 of the Criminal Procedure Code, (Cap. 75), Laws of Kenya. We have looked at the record and it is abundantly clear that the defense counsel made an application to have the Appellant acquitted on the ground of delay in prosecuting his case timeously rather late in the day after the Prosecution had closed its case. The timing of this application in our view was ill conceived. We note however, that notwithstanding this sudden ambush, the Prosecution did well in responding to the application and even furnished the court with documentary evidence in support of their case. The court properly dismissed the belated application in holding that it ought to have been brought to court at the time when the Appellant was being arraigned in court. We emphasise that it is Appellant who prompted this proceeding by making the application too late in the day. He could not have his cake and eat it. The court was obliged to make a ruling anyway, which it properly did in the circumstances. We find no merit in this ground of appeal.

7. <u>Was the trial Court impartial in allowing the Prosecution to edit proceedings and was the defence denied a similar opportunity?</u>

On ground 24, the appellant urged that the Court Martial was very impartial in allowing the Prosecution to edit proceedings without affording the defence the same opportunity contrary to Article 159 of the Constitution which provides for equal opportunities for everyone and that justice should be done to all irrespective of status. Counsel for the Appellant did not however point out the exact part on record the trial court allowed the prosecution to edit proceedings and where they were denied a similar opportunity to allow us determine the merit of the same. This court will not belabor itself on this ground.

8. <u>Was the sentence by the court Martial harsh and meted out twice?</u>

The Appellant argued that he was a Senior Sergeant and was demoted to a Private which was two grades between Sergeant and Corporal. The Court Martial went further to hand down a dismissal of the Appellant from the Armed Forces again meting out double sentences for the same offence contrary to the Armed Forces Rules of Procedure and rules of natural justice.

We have examined Section 103(3), (4) and (5) of the Act that provide as follows:-

> ***"(3) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.***
>
> ***(4) Where a serviceman is sentenced by a court martial to imprisonment, he may in addition be sentenced to dismissal from the armed forces.***
>
> ***(5) Where a warrant officer or non-commissioned officer is sentenced by a court martial to imprisonment or active service punishment, he shall also be sentenced to reduction in rank to private or corresponding rank; and, if the court martial fails to sentence him to such reduction in rank, the sentence shall not be invalid but shall be deemed to include a sentence of such reduction in rank."***

Under Sub-Section (4) in addition to an imprisonment sentence, the appellant can be dismissed from the armed forces which is the case herein. Sub-Section (5) provides for reduction in rank as well. The offences though similar were each committed on distinct dates. Hence, no double jeopardy was occasioned to the Appellant. The sentences were within the law and befitted the crime committed by the appellant and we find no ground to disturb them. These sentences are deterrent and expected to cure the scourge of dishonesty in the recruitment of officers and servicemen in the military.

<u>Conclusion</u>

On the whole, the Court Martial properly directed itself in arriving at the verdict. PW1 testified how he met the appellant at a local hotel and gave him Kshs.100,000/= in anticipation he would secure him a job at the armed forces. His testimony was well corroborated by that of PW3 who accompanied him to meet the appellant and therefore witnessed the exchange.PW4 on his part testified that he deposited Kshs.85,000/= into the appellant's account, which was meant to assist his nephew to gain employment into the army. He concurred with PW1's testimony that PW1 gave him the appellant's account number to deposit the said amount of money which he did. It is instructive to note here that these transactions were proved in court by the production of documentary evidence in support of them by the Prosecution. There was also evidence of money transfers that was produced in court. In total, the prosecution proved that the appellant received a total amount of Kshs.400,000/= from PW1, PW6 and PW7.

The Appellant's real intention was to defraud the complainants. He made false representations on his capability to secure recruitment for PW1 in the Armed Forces and PW6 and PW7 in the Administration Police. He fraudulently and illegally obtained Kshs. 400,000/= from PW1, PW6 and PW7 which was purportedly meant to achieve this goal. Unfortunately, he rendered himself a dismal failure in this task. He carried a well-choreographed fraud effectively duping innocent civilians in pursuit of an opportunity to serve their country in the armed forces. The complainants are equally to blame for perpetuating and aiding the officer carry out his mission, by demonstrating an act of desperation that caused them to go to such lengths to meet the demand to secure them a job by enriching a corrupt and utterly dishonest officer who knew only too well that he could not influence their recruitment in the Army and Administration Police. The latter notwithstanding, the Appellant cannot justify his dishonest actions. He must carry the weight of his sins. Consequently, we dismiss his appeal against conviction and sentence.

DATED AND DELIVERED THIS 19TH DAY OF OCTOBER 2015

HON. L. KIMARU

JUDGE

HON. G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant present in person

2. Mr. Muriithi the Respondent