

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
AT NAIROBI
CRIMINAL APPEAL NO. 197 OF 1990

**(From Original conviction and sentence in Criminal Case
NO. 1524 of 1988 of the Resident Magistrate's Court at Nairobi)**

SAMUEL MBUGUA KIBE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

Coram: Mbogholi Msagha Judge
L.K. KIRORI for the appellant
O.Ondieki(Mrs) state counsel) for the respondent

J U D G M E N T

The appellant was convicted of the offence of obtaining money by false pretences c/s 313 of the penal Code and sentenced to 3 years imprisonment. This is an appeal against the said conviction and sentence.

It was alleged that he received money from the complainants as consideration of a piece of land which he was unable to transfer.

There was evidence that both Pw1 and pw2 paid money to the appellant. The document examiner Pw8 confirmed that the appellant executed the transfer documents. The appellant also admitted that he never transferred the land to the complainants.

It was not disputed that the appellant owned a piece of land measuring 20 acres at Limuru. There was however a dispute that had reached the court which was yet to be determined. The money paid was for a future promise.

The subject matter for which consideration changed hands was still in existence. The defence of the appellant mentioned this pending suit. yet in her judgment the learned trial magistrate stated that he appellant has not given this court any good reason why he has failed" to transfer the land. In effect she shifted the burden of proof to the appellant.

Finally the matters before the learned trial magistrate were contractual where the ultimate remedy available was specific performance or refund of the alleged consideration. In my view criminal jurisdiction could not be invoked where the issues were clearly civil in nature.

In the end must find, as I hereby do, that the charge against the appellant was not proved to the required standard that is beyond reasonable doubt.

Consequently, this appeal is hereby allowed conviction quashed and sentence set aside.

Orders accordingly.

Dated and delivered at Nairobi this 22nd day of July, 1993.

A. MBOGHOLI MSAGHA

JUDGE