

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL CASE NO. E104 OF 20243

FEDANI MWAI GOKO.....

.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDENT

(From original Conviction and Sentence in Nanyuki CMCR

1334 of 2015 - Hon. B.M. Mararo - SPM)

J U D G M E N T

1. The Accused, **FEDANI MWAI GOKO**, was charged jointly with another with Obtaining money by false pretense contrary to **Section 313 of the Penal Code**. The particulars of the offence being that on diverse dates between 13th August 2013 and 25th November 2013, in Nanyuki Township within the Laikipia County of the Republic of Kenya, with intent to defraud, jointly obtained Kshs,

2,160,000/= from AYAFOR AZISEH NGWINGMBA KIMANI in pretense that he would sell her a piece of land a fact that he knew to be false.

2. He faced a 2nd Count jointly with another of obtaining money by false pretence contrary to **Section 313 of the Penal Code**. Particulars were that on diverse dates between 18th August 2013, 8th September 2013 and 19th November 2013 in Nanyuki Township within Laikipia County, with another already before the Court, the Appellant with intent to defraud obtained Kshs. 2,160,000/= from Alice Njoki Kirumba in pretence that she would sell her a piece of land a fact she believed to be false.

3. He faced, jointly with another, a 3rd count of Conspiracy to commit a felony contrary to **Section 293 of the Penal Code**. The particulars were that on diverse dates between 18th August 2013, 8th September 2013 and 19th November 2013 in Nanyuki Township within Laikipia County, with another already before the Court, the Appellant conspired to

defraud Ayafor Aziseh Ngwingimka Kimani of her money worth Kshs. 2,160,000/=.

4. He also faced, again jointly with another, a 4th Count of Conspiracy to commit a felony contrary to **Section 293 of the Penal Code**. The particulars were that on diverse dates between 18th August 2013, 8th September 2013 and 19th November 2013 in Nanyuki Township within Laikipia County, with another already before the Court, the Appellant conspired to defraud Alice Kihumba of her money worth Kshs. 2,160,000/=.
5. He pleaded not guilty to the charges, was convicted and sentenced to serve 5(five) years imprisonment.
6. Aggrieved by the conviction and sentence, he lodged this appeal against both conviction and sentence.
7. The Appellant has withdrawn the whole appeal as filed save for the plea that the court applies the provision of **Section 333(2) of the Criminal Procedure Code** that require that the period spent in custody by an accused person be deducted from the sentence imposed.

- 8.** It is the Appellant's contention that he spent 2 months in remand before he changed plea, was convicted and sentenced.
- 9.** The state is opposed to interference with the sentence on the basis that the Appellant absconded bail and was arrested and remanded and should therefore not benefit from the provision of **Section 333(2) of the Criminal Procedure Code.**
- 10.** I have considered the positions taken by the parties. Of determination is whether this court should interfere with the trial court's sentence by factoring the time spent in remand.
- 11.** The undenied fact is that the Appellant found himself remanded after having secured bond and then absconded thus leading to his arrest and detention.
- 12.** Section 333(2) of the Criminal Procedure Code provides that where a person sentenced by a court has prior to the sentence been held in custody, the sentence shall take into account the time spent in custody.

- 13.** In my understanding, this provision applies to situations where an offence is not bailable (and the current legal regime in Kenya is such that no offence is unbailable) or where an accused person has not been able to secure bail through inability to meet the terms granted.
- 14.** In my considered view, applying this provision in respect of a person who was bailed by court but who breached the terms of bail by absconding and who was subsequently arrested and put in detention would fly in the face of the rule of law and the administration of justice as it would be akin to rewarding such a person for his deplorable conduct and blatant breach of the law.
- 15.** Though **Section 333 (2) of the Criminal Procedure Code** is not explicit on, and indeed does not mention the categories of those in custody to be considered, I am not persuaded that parliament in its wisdom envisaged this Section to apply to persons who in the first place disobeyed the court and visited the unpleasant outcome of detention on themselves.

16. In the circumstances, this court is satisfied that the reprieve afforded by **Section 333(2) of the Criminal Procedure Code** is only available to persons who find themselves in custody owing to the unbailable nature of the offence charged or the inability to raise bond terms and cannot be extended to apply to persons who breach terms of bail with abandon.

17. With the result that the appeal on sentence based on ground of application of **Section 333(2) Criminal Procedure Code** fails and is dismissed.

Dated signed and delivered virtually this 9th day of February 2026.

A.K. NDUNG’U

JUDGE