



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 86 of 2008

STANLEY NGAIRE WAMWEGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant herein is Stanley Ngaire Wamwega. He was jointly charged with others before the Kerugoya Senior Resident Magistrate Court in Criminal Case No. 1142/2006. He was found guilty and convicted on count IV for attempting to obtain money by false pretences contrary to section 313 of the Penal Code. He was sentenced to 3 years imprisonment. Being dissatisfied with that conviction, he filed this appeal which is against both conviction and sentence. He relies on the 7 grounds of appeal as enumerated in his petition of Appeal. At the hearing he filed a written submission where he has introduced other grounds which are not in the petition and without the leave of the court. I will therefore ignore any new grounds which have been disguised as submissions.

I have considered the said grounds carefully but they do not largely seem to address the issue at hand. Ground 1 and 2 for instance deal with PW1's evidence- yet PW1 never mentioned the appellant and even categorically stated on X-examination that he never had any transaction with the appellant. Grounds 4, 5, 6 and 7 are on severity of the sentence and not on the conviction. The only relevant ground therefore is ground 3 which reads:-

*“ The learned trial magistrate erred in law and fact
in believing PW2's evidence which were mere
allegations that could not be supported by any
documentary evidence.”*

I will consider that ground along with the rest of the evidence. Learned counsel for the state supported both the conviction and the sentence and urged the court to dismiss this appeal.

In a nutshell, the evidence before the trial court in respect of count IV on which the appellant was convicted

was that the appellant went to PW2's home on 3/8/2006 about 3.00p.m. He introduced himself as '*Mwangi*' and told him that he had been sent by Celtel Mobile Phone Company to look for land to build a booster. He was shown the land and he said he liked it. He left promising to bring the directors the following day so that they could negotiate with PW2 directly. He is said to have returned with 3 people the following day and introduced them to PW2 as Directors of Celtel Company. After they negotiated and agreed on the terms, PW2 was asked for 10,000/= which was supposed to be the application fee. She also completed some application forms. She said that she had no money and the appellant offered to lend her the 10,000/= so that she could refund later. They agreed to meet at a place called Kagio on 5/8/2006. The following day however, the appellant is said to have called her at the middle of the night asking for his money back. She promised to refund the same the following morning.

PW2 therefore called her daughter PW3 and requested her to meet her the following day with the 10,000/=. On hearing the story, PW3 suspected that something was a miss. She called her uncle PW6 and told him what was happening. PW6 decided to set up a trap and he called the police and informed them of the scheduled meeting the following day where PW2 was to refund the 10,000/= and then continue with the deal.

PW2 went to her brother PW6 and also narrated the same story. She told him where she was supposed to meet the people. She took the witness to the meeting and she introduced him to some 5 people who he said were in a taxi. He said that the appellant was among those people. He promised to go and get the money for his sister and then they would meet up later. That is when he called the police who intercepted the group and arrested them. The motor vehicle was searched and the application forms completed by PW2 were found inside. They were taken to the police station and charged with the offences in question.

In his defence which was unsworn the appellant told the court that he was just arrested while aboard his co-accused's motor vehicle. He denied having committed any offence.

The learned trial Magistrate did not however believe the appellant's defence. He found that the appellant was positively identified by PW2 and PW6. Indeed, the application forms completed by PW2 were recovered from inside the car where the appellant and the others were.

I have considered all this evidence along with the ground of appeal mentioned earlier, the appellant's submission and the learned state counsel's submission. It is not correct to say that the appellant was convicted on the uncorroborated evidence of PW2. It is clear from the record that PW6 was also introduced to the appellant and his accomplices as PW6 promised to go and look for the 10,000/= to assist his sister. The recovery of the application forms from the car in which the appellant was also offered corroboration to PW2's evidence. The appellant was therefore convicted on the corroborative evidence of PW2, PW4, and PW6. I am satisfied like the learned trial magistrate that the meetings between PW2 and the appellant happened in broad daylight. There was no possibility of a mistaken identity. On the first day, it was 3.00p.m. They even took time and went to the land where the Booster was to be erected. On the date of the arrest, they were also together in broad daylight and PW6 also had opportunity to identify the appellant. The evidence against the appellant was simply overwhelming. He was properly convicted on sound evidence. I have no reason whatsoever to disturb that conviction. I uphold the same. On the sentence; I find the same lawful and justified in the circumstances of the case. I will not interfere with it either.

In sum therefore, I find that his appeal lacks merit. The same is hereby dismissed.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 12TH Nov 2009.

In presence of:-The appellant and Mr. Omwega for the state.



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