



REPUBLIC OF KENYA



**Boro v Republic (Criminal Revision E750 of 2024)  
[2024] KEHC 10344 (KLR) (Crim) (22 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E750 OF 2024  
K KIMONDO, J  
AUGUST 22, 2024**

**BETWEEN**

**DAVID BORO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision from the sentence in Milimani Criminal Case No. 836 of 2019 by B. Ochoi, Senior Principal Magistrate, on 24th July 2023)*

**RULING**

1. The applicant was convicted by the lower court on two counts of conspiracy to defraud contrary to section 317 of the [Penal Code](#); and, obtaining money by false pretenses contrary to section 313 of the [Code](#). He was imprisoned for 2 years.
2. Being aggrieved, he lodged a revision vide a notice of motion dated 3<sup>rd</sup> April 2024 praying, in the main, for leniency or a non-custodial sentence. He avers that he is remorseful, is a first offender and an elderly man. Furthermore, he is ailing and his family has been left without financial support. In particular, he claims that he suffers from a terminal illness which has been exacerbated by failure to meet doctor's appointments at Kenyatta National Hospital.
3. His learned counsel, Mr. Nzioka, argued that in view of the Judiciary's Sentencing Guidelines; and, the directive by the Hon. Chief Justice to review sentences of three years and below, the applicant is a good candidate for early release.
4. The application is vehemently opposed by the Republic through grounds of opposition dated 9<sup>th</sup> May 2024. In a synopsis, the State contends that the sentence was appropriate in all the circumstances of the two offences.



5. On 8<sup>th</sup> March 2024, I heard brief arguments from both the learned counsel for the applicant and the Republic.
6. I take the following view of the matter. Under Article 165 (6) of the *Constitution* as read together with sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to revise the sentence passed by the subordinate court.
7. Firstly, the applicant does not challenge his conviction or legality of the sentence. What that means is that there is no contest about the propriety or soundness of the decision by the learned trial magistrate.
8. Secondly, the applicant was convicted for misdemeanours against property. He falsely presented himself verbally and in writing to Joseph Wathua Kigwe to be the owner of LR Kwale/Galu Kinondo/100 and received Kshs 2,000,000 as the purchase price. There is no evidence of any restitution.
9. The offences carried a sentence of up to three years. It was also entirely within the powers of the trial court to imprison the applicant without the option of a fine.
10. The applicant is now aged about 69 years. I am satisfied from the medical documents annexed and marked DB2(b), that he suffered a cardiac failure on 3<sup>rd</sup> April 2023 which led to breathing complications and bilateral leg swelling. The prison authorities took him to Kenyatta National Hospital where he was treated and discharged on 9<sup>th</sup> April 2023. He was presented for a review on 23<sup>rd</sup> January 2024 as per the report Dr. R. Nyaga, a consultant physician and cardiologist, dated 8<sup>th</sup> March 2024.
11. True, the applicant may have missed regular check-ups or follow-up but I am not persuaded that the prison authorities have neglected his condition. Considering the nature of the offences, I am disinclined to review the sentences. The upshot is that the revision is unmerited and is hereby dismissed.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF AUGUST 2024.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

Applicant.

Mr. Nzioka for the applicant instructed by Kituo cha Sheria.

Ms. Awino for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

