



**FMK v Republic (Criminal Revision E171 of 2024)
[2024] KEHC 15079 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E171 OF 2024
A MSHILA, J
NOVEMBER 22, 2024**

BETWEEN

FMK APPLICANT

AND

REPUBLIC RESPONDENT

(Being Review of Plea and Sentencing in CMCR No.E1942 of 2024)

RULING

1. A brief outline of the case was that the Applicant was charged with the offence of Cheating c/s 315 of the Penal Code.
2. The particulars of the offence are that on the 8th day of August, 2024 at Gachie in Kiambaa sub county within Kiambu County the Applicant by means of fraudulent trick obtained Kshs.29,000/- from Mwau David Kinyanjui.
3. The Applicant was convicted on his own plea of guilty and was sentenced to serve a term of one (1) year imprisonment; Being aggrieved by the conviction and sentence, the Appellant filed this instant application for revision of his sentence on the grounds of his mental incapacity.
4. At the hearing hereof the Applicant was represented by Mr. Karoki whereas the Respondent was represented by Prosecuting Counsel Mr Gacharia; both parties made oral submissions; hereunder are the parties respective submissions;

Applicant's Case

5. The application is for review of conviction and sentence under the provisions of Sections 362 and 364 of the Criminal Procedure Code; Articles 159(2), 165(6), (7) of the Constitution of Kenya 2010; and other enabling provisions of the law; the Applicant was convicted on his purported admission of



the Charge; The Applicant is barely 19 years of age and suffers from lucid moments on account of a nervous disorder which affect his mental stability, judgment, response and reactions; and relied on the Mental Assessment Report dated 6/09/2024 prepared by a psychiatrist from Thika Level 5 Hospital which confirmed the Applicants mental incapacity.

6. The Applicant was a victim of conmen and scammers who exploited his mental weakness and personal health challenges coupled with the lack of mastery of a new smartphone; the Applicant did not intend to plead guilty as he was misdirected on account of his mental incapacitation; he accepted whatever that was read out to him without comprehending that he was in a court of law and facing criminal charges;
7. The Applicant did not have the capacity to take plea on account of his mental incapacity; and was not cautioned despite being an imbecile in need of representation and guidance; the Applicant submitted that the application was brought in a timely manner and prayed that the Application be allowed otherwise the Applicant will be subjected to a grave injustice.

Respondent's Case

8. Counsel for the Respondent in response stated that after reading the Mental Assessment Report the State was not opposed to the application; The Plea was not unequivocal and prayed for the case to be forwarded back to the subordinate court for re-trial.

Issues for Determination

9. After hearing the rival submissions this court has framed only one issue for determination which is whether the trial court erred in failing to take into consideration the mental status of the Applicant.

Analysis

Whether the trial court erred in failing to take into consideration the mental status of the Applicant.

10. Upon perusal of the court record this court notes that the Applicant had been charged in SPMCR NO.E1942 OF 2024 with the offence of Cheating c/s 315 of the *Penal Code* and was convicted and sentenced on the 14/08/2024 on his own plea of guilty and was sentenced to one (1) year of imprisonment; being aggrieved with the trial court's decision the Applicant preferred this instant application for revision;
11. The High Court stems its supervisory jurisdiction from the *Constitution* of Kenya Article 165(6) (7) which provides that:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
12. The High Court also obtains its revisionary jurisdiction from the statute under Section 362- 364 of the *Criminal Procedure Code*. The court in exercising its discretion based on the above provisions is required to pay attention to circumstances of each case.



13. Upon calling for the trial court record and after careful perusal of the record it is apparent that the trial court did not make any observations on the demeanour of the Applicant nor take into consideration the mental status of the Applicant which would have necessitated the calling for a mental assessment report before taking the Applicants' Plea.
14. In light of the above this Court finds that an irregularity has been demonstrated in the conduct of the proceedings by the trial court so as to warrant the granting of the revisionary orders;

Findings and Determination

15. For the foregoing reasons this court makes the following findings and determinations;
 - i. The applicant is found to have merit and it is hereby allowed. The trial court did not take into consideration that the Applicant was of unsound mind; The Plea of Guilty is found to be equivocal and questionable.
 - ii. The conviction and sentence is hereby set aside and the Applicant be and is hereby discharged in respect of the proceedings brought against him and he be released from custody, forthwith unless otherwise lawfully held.
 - iii. The Applicant to continue with treatment; The discharge shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 22nd DAY OF NOVEMBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

N/A - for the State

Karoki - for the Applicant

