



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Republic (Criminal Revision E194 of 2022)
[2023] KEHC 285 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E194 OF 2022
LN MUGAMBI, J
JANUARY 27, 2023**

BETWEEN

MICHAEL NJUE NJERU APPLICANT

AND

REPUBLIC RESPONDENT

(A Revision from original conviction and sentence of the Chief Magistrate's Court at Thika (A.M. Maina, CM) dated 11th March, 2021 in Criminal Case No. 617 of 2017)

RULING

1. The applicant Michael Njue Njeru was charged alongside six others with the offence of obtaining by false pretences contrary to section 313 of the *Penal Code*.
2. The particulars of the offence were that on October 31, 2016, and January 4, 2017 at Ruiru township within Kiambu county jointly with intent to defraud, obtained timber valued at Kshs 5,820,000 from Ruiru timber services by falsely pretending he was in a position to pay the said amount to Simon Kamuiru Guchu, a fact which he knew to be false.
3. The second count was also for obtaining by false pretences contrary to section 313 of the *Penal Code*.
4. The applicant alongside six others was charged that on December 15, 2016 at Ruiru township within Kiambu county jointly with intent to defraud obtained timber valued at Kshs 2,334,000 from Ruiru timber services by falsely pretending that you were in a position to pay the said amount to Simon Kamuiru Gichu, fact he knew to be false.
5. The applicant pleaded guilty to counts 1 and II on March 11, 2021. He was accordingly sentenced to a fine of Kshs 500,000/= on each count in default serve twelve months imprisonment on each.
6. He thus filed this revision application through which he seeks the following:-



1. That the honourable court be pleased to consider the time spent in remand custody as per section 333(2) of the *Criminal Procedure Code*.
2. That, he spent a total of four (4) years waiting for conclusion of trial in remand custody.
7. Section 333(2) the proviso thereof states:-

“ provided where the person sentenced under sub-section (1) has prior to such sentence, been held in custody, the sentence shall take into account the period spent in custody”
8. The proviso to section 333(2) is an exception to the general rule that every sentence shall be deemed to commence on the date it is pronounced as provided at the onset of section 333(2).
9. In sentencing the applicant in this case, did the trial court consider the duration spent in remand? On that aspect, the court said:-

“ sentence:
... I also note the period that he has been in custody which is 4 years. I proceed to fine him Kshs 500,000 in default 12 months imprisonment for each count...”
10. It is therefore a fact, which the trial court noted and acknowledged that at the time it was sentencing the applicant in this case that he had spent four years in custody.
11. The power of revision is granted under section 362-364 of the *Criminal Procedure Code* to the High Court.
12. However, this power is rooted in article 165(6) and 165(7) of the *Constitution*.
13. Under section 362 of the *Criminal Procedure Code*, it provides: -

“ The High Court may call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings in any such court.”
14. Section 364 specifies what the High Court can do in respect of such proceedings. The High Court in exercising its revisionary powers however should always bear in mind that sentencing is an exercise in judicial discretion and should be careful not to tinker with it unless there are demonstrable reasons that the sentence imposed was not provided for in law, that the trial court did not take into account relevant factors or took into account irrelevant factors at the time of sentencing, and/or that the sentence imposed was too harsh or lenient in the circumstances of the case. (See *Ogolla S/o Owuor v R* 1954 Eaca 270).
15. In the present case, the trial court observed that the appellant had spent four years in custody at the point he pleaded guilty and was sentenced.
16. I have also noted that at the time of sentencing, the prosecution indicated that he had no record meaning the applicant (accused) was a 1st offender at the time. He pleaded guilty on his own plea.
17. I have also checked the maximum penalty provided for the offence of obtaining by false pretences. It is a misdemeanour punishable with three years imprisonment.



18. Taking into account the period the applicant had been in custody was for four (4) years, i find the sentence imposed at the time of conviction on his own plea of guilty to have been manifestly excessive in the circumstances of this case.

19. I accordingly reduce the sentence imposed by the trial court to the period served and order that the applicant be set free unless otherwise lawfully held.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JANUARY, 2023.

L.N. MUGAMBI

JUDGE

In the presence of :-

Coram:

Court Assistant: Kinyua

Appellant: absent

DPP for Respondent: Mr. Gacharia

COURT

Ruling delivered virtually.

L.N. MUGAMBI

JUDGE

