



**Ndumia v Republic (Criminal Revision E048 of 2023)  
[2023] KEHC 1549 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1549 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E048 OF 2023  
DR KAVEDZA, J  
FEBRUARY 27, 2023**

**BETWEEN**

**RUTH WAIRIMU NDUMIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged, convicted and sentenced to 12 months imprisonment for the offence of obtaining money by false pretences contrary to sections 312 as read with section 313 of the [Penal Code](#).

**Analysis of law.**

2. Upon receipt of the request for revision of sentence, this court directed that a sentence review report be filed on the convict for consideration by the court.
3. The Probation Officer Ms Ayuma Agnes Otukho filed a report on the convict for consideration by the court. The report shows that the applicant is 29 years. She is currently serving her sentence in Langata Women's Prison.
4. The powers of the High court in revision are contained in section 362 through to 366 of the [Criminal Procedure Code](#) (cap 75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”



5. The matter of sentence in this case is governed by section 313 of the *Penal Code* which provides that a person convicted for the offence of obtaining by false pretence is guilty of a misdemeanor and is liable to imprisonment for three (3) years. It therefore follows that the imprisonment term of 12 months was within the law. As such, it has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant
6. I am nonetheless alive to the *Sentencing Policy Guidelines* page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”
7. I have also considered the probation report by Ms Agnes Ayuma which indicated that the applicant is not willing to undergo community rehabilitation. She plans to complete her sentence in custody. She said that she can only live well in society if she pays back her debts and that she needs the remaining time in custody to strategize her reentry in society. Ultimately, the probation officer recommended that the inmate is not suitable for community service orders.
8. Having taken all the facts into consideration, I am of the view that this is not a suitable case for non-custodial sentence and the objective of sentencing can only be met by a custodial sentence. Furthermore, the applicant is not receptive to a non-custodial sentence and prefers to complete her sentence while in custody. She feels that the victim could harm her including all those she owes money, if she faces them without the money owed.
9. In the circumstances, I hereby dismiss the application for revision and sustain The 12 months’ sentence as imposed by the trial court.
10. It is so ordered.

**RULING READ, DELIVERED AND SIGNED THIS 27<sup>TH</sup> DAY OF FEBRUARY 2023**

**D. KAVEDZA**

**JUDGE**

In the presence of:

