



REPUBLIC OF KENYA



**Wanjiku v Republic (Criminal Revision E122 of 2022) [2023] KEHC 1543 (KLR)
(Employment and Labour) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
EMPLOYMENT AND LABOUR
CRIMINAL REVISION E122 OF 2022
DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

STANLEY MAINA WANJIKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to 2 years' imprisonment for obtaining money by false pretense contrary to Section 313 of the *Penal Code*.
2. The applicant subsequently filed an application for revision dated July 07, 2022 based on grounds that may be summarized as follows:
 - a. That the court to consider the time spent on remand.
 - b. That the court finds it fit to order the sentences to run concurrently and commence on the date of arrest
 - c. That the fine imposed in both counts be set aside
 - d. That he is the only bread winner to my young family with a housewife and young children who solely depend on him for support.
 - e. That he has an aging sick mother who is a widow and who solely depends on him for upkeep
 - f. That while in prison, he has learnt a lot including the consequences of his crime and he fully regret the offences.



3. Upon receipt of the application for revision of sentence, this court directed that a Sentence Review Report be filed on the conviction for consideration.
4. The Principal Probation Officer Mr. M. P. Njoroge did file his report dated January 92023 in Court. The report shows that the Applicant is aged 39 years old. He is currently serving his 22 months prison term at Kamiti Medium Prison and recommends a non-custodial sentence.
5. I have considered the material before me, as well as the Sentence Review Report by the Principal Probation Officer. Section 362 of the [Criminal Procedure Code](#) 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.”
6. The issue herein is whether the circumstances of the matter do justify a revision by a superior court from subordinate court. On this issue I draw guidance as elucidated in the case in the case of [Republic -vs- James Kiarie Mutungei](#) [2017] eKLR where Nyakundi J held thus:

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits...”
7. The prayer of revision vested in this court under Section 362 of the Criminal Procedure Code is principally to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any subordinate court. Where the court finds that the findings, sentence, or order recorded or passed by the subordinate was either not correct, lawful or proper, the remedy under Section 364 is either to reverse the sentence where there is a conviction or alter the finding while maintaining the sentence, reduce or increase the sentence as prescribed by Section 354 of the Criminal Procedure Code.
8. It is my view that the trial magistrate’s sentencing was within the law. The applicant has not proven any illegality or irregularity in the proceedings or sentence meted therein. The accused person was found guilty on 2 counts and convicted to 2 years imprisonment on each count to run respectively. He had already served 1 year and 7 months on remand before sentencing, thereafter served about 12 months in prison; which totals to about 2 years and 7 months in prison. The period for the one of the counts has thereby been already served, and is left with 17 months for the second count.
9. I have considered the grounds in the application, the mitigating circumstances in the case and the respective probation officers’ Sentence Review report on the applicant, who noted that the accused was remorseful and is willing to offer unpaid labor when serving a community service order.
10. The sentencing Policy Guidelines states that the effect of the mitigating circumstances is to lessen the term of custodial sentence. The accused in mitigation stated through his application was that he was reformed and that he was the sole bread winner for his young family and his ailing mother also depended on him.



11. Having taken all the facts and the circumstances of this case, and the time already served, I am of the view that this is a suitable case for a non-custodial sentence on the remaining sentence period.
12. To that effect, the applicant shall serve supervised and unpaid community service at the Githurai Chief's Office under the supervision of Milimani Subcounty Probation Officer, as recommended in the Sentence Review Report.
13. It is hereby so ordered.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023

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D. KAVEDZA

JUDGE

In the presence of:

