



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**CRIMINAL APPEAL NO. E073 OF 2021**

**(From original conviction and sentence in criminal case No. E410 of 2021 of the Chief Magistrate's Court at Kitale delivered by Hon. M.N. Osoro – RM)**

**JAFRED SIENGO MABELE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, **Jafred Sirengo Mabele** was charged with **Obtaining Money False by Presences** contrary to **Section 313 of Penal Code**. The particulars of the offence were that on 16<sup>th</sup> August 2021 at Kitale Law courts within Trans Nzoia County, the Appellant, with the intent to defraud obtained from Mary Khisa Nasongo Kshs 2020 by falsely pretending that he was in a position to help bail out her son who at the time, was at GK Prison Kitale, a fact which he knew to be false. When the Appellant was arraigned before the trial Magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve five (5) years imprisonment on 13<sup>th</sup> September 2021.

The Appellant was aggrieved by the custodial sentence that was imposed on him. He filed an appeal to this court challenging the said sentence. The Appellant was of the view that the sentence was manifestly harsh and excessive and did not reflect the severity of the crime that he had committed. He was of the opinion that the sentence imposed upon him constituted miscarriage of Justice.

Mr Nakitare, the advocate of the appellant amplified the grounds of appeal by stating that the trial court did not take into consideration the fact that the Appellant was remorseful and had sought forgiveness from the court. He pointed out that the trial court had ignored the Probation report which was favourable to the Appellant without giving any reasons. He submitted that the Appellant, being a family man, regrets the crime that he committed. By sentencing him to serve a custodial sentence, the court deprived his fourteen (14) member family a source of support. He urged the court to allow the appeal.

Mr. Omooria for the State conceded to the Appeal. While noting that what the Appellant did should be discouraged because it undermines confidence in the justice system, nevertheless, he was of the view that the sentence was manifestly excessive in the circumstances and should be reviewed.

When a trial court is sentencing an accused, it is exercising judicial discretion. This court cannot interfere with such exercise of discretion unless it is established that either the trial court applied the wrong principle or failed to take into account the correct principle when sentencing the accused. This court will interfere with the sentence where it forms the view that the sentence is either too lenient or manifestly excessive in the circumstances. Of course, the court will reconsider the sentence if it is illegal.

In the present Applicant, it was clear to this court that the sentence meted on the Appellant was manifestly excessive in the circumstances as to attract this court's intervention. Although the trial court appreciated the seriousness of the offence in that the offence is against the administration of justice, the custodial sentence of five (5) years imprisonment did not serve the interest of justice. This court will therefore set aside the said custodial sentence and substitute it with a fine of Kshs 30,000/=.

This court therefore orders that the sum of Kshs 30,000/= deposited in court as cash bail shall be converted to the fine. It is so ordered.

**Dated at Kitale this 24<sup>th</sup> day of February 2022.**

**L. KIMARU**

**JUDGE**