



**Mboha v Republic (Miscellaneous Criminal Application E354 of 2021)
[2022] KEHC 13221 (KLR) (Crim) (27 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E354 OF 2021
DO OGEMBO, J
SEPTEMBER 27, 2022**

BETWEEN

BONFACE JUMA MBOHA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Bonface Juma Mboha, has moved this court by way of notice of motion filed herein on October 13, 2021. The application brought under section 333, 362 and 364 of the *Criminal Procedure Code*, seeks revision of the sentence meted out against him in Milimani Chief Magistrate's court Criminal Case Number 1096 of 2016. The application is supported by his own affidavit in which he declares that he was charged with the offence of stealing by agent contrary to section 268 as read with section 283 of the *Penal Code*. That he was sentenced to serve 3 year's imprisonment. The applicant has pleaded that he is a changed man, that he regrets his actions and that his family is in distress.
2. The respondent has opposed this application on grounds that the sentence meted out is legal and the applicant has not shown any illegality or impropriety of the same.
3. I have considered the application of the applicant and the response of the respondent. The applicant was charged under section 268(1) as read with section 283 of the *Penal Code*. The sentence provided therein is 7 years imprisonment. In this case, the applicant was sentenced to serve 3 years imprisonment. This sentence, in my view, is both legal and proper.



4. The application of the applicant is based on the mitigation factors as enumerated in the affidavit in support of the application. The issue therefore, is whether these factors of mitigation can form a basis for revision. Section 362 of the Criminal Procedure Code states:-

' 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. In this application, the applicant has not shown any incorrectness, illegality or impropriety in the aggrieved order. The application therefore falls short of the statutory standards for revision.

6. Again, on the issue of sentence, this court is guided by the decision in Republic Versus Stephen Mweizela Mutuku & 2 others (2020)eKLR, that,

' The court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.'

7. In our instant case, it has not been shown that the learned trial magistrate acted upon wrong principles or overlooked some material factors.

8. The sum total is that this application of the applicant lacks any merit. I accordingly wholly dismiss this application. It is so ordered.

D. O. OGEMBO

JUDGE

27TH SEPTEMBER 2022

Court:

RULING READ OUT IN OPEN COURT IN THE PRESENCE OF THE APPLICANT (NAIROBI REMAND) AND MS. JOY FOR THE STATE

D. O. OGEMBO

JUDGE

27TH SEPTEMBER 2022.

