



**Sila v Republic (Criminal Revision E173 of 2022)
[2022] KEHC 14805 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E173 OF 2022
GMA DULU, J
OCTOBER 27, 2022**

BETWEEN

ILUVE SILA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant who has been convicted and sentenced to one (1) one year imprisonment for obtaining money by false pretence contrary to section 313 of the [Penal Code](#) has come to this court through a Notice of Motion dated June 22, 2022 requesting for review of sentence.
2. In his application, the applicant has asked for review of sentence due to the prevailing mitigating factors, and feels that he should either be put on community service sentence, or other non-custodial sentence.
3. In his affidavit in support of the application, he states that he is a first offender, aged 93 years, and has suffered a stroke.
4. Learned Prosecuting Counsel Ms. Nyakibia does not oppose the revision of the sentence requested.
5. I have perused the proceedings, judgment and the factors taken into account by the magistrate in sentencing the applicant. I have also seen him in court, walking with a limp and he is certainly advanced in age.
6. I note that in sentencing him, the magistrate stated that the applicant was not remorseful because he said that he had sold the land but the buyer refused, and that he offered him alternative land but he again refused.
7. From the facts of the case however, in my view, that remark of the applicant did not mean that the applicant was not remorseful. He merely stated that he sold the land which belonged to his father,



which agrees with the evidence tendered in court by the title owner Pw5 Jonathan Musila Nzioka, that the applicant who is a son of the original owner, was not present when Pw5 was sold the land by the owner who was father of the applicant.

8. In the circumstances of this case, and especially the age and health condition of the applicant, in my view, it is fair and proper for this court to exercise its discretion under section 362 of the *Criminal Procedure Code* (cap.75) to review the sentence imposed.
9. Since the applicant was sentenced in June 2022, more than four (4) months now, I will not put him on Community Service Order, but deem the prison sentence he has already served to date to be adequate punishment.
10. I thus set aside the sentence imposed by the trial court, and instead order that the applicant serves the prison sentence he has served to date. He will thus be discharged from prison forthwith unless otherwise lawfully held.

DELIVERED, SIGNED & DATED THIS 27TH DAY OF OCTOBER 2022, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE

