



REPUBLIC OF KENYA



**KENYA LAW**  
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**Andubi v Republic (Criminal Revision E008 of 2022)  
[2022] KEHC 15553 (KLR) (18 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15553 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E008 OF 2022  
PJO OTIENO, J  
NOVEMBER 18, 2022**

**BETWEEN**

**EMMANUEL ANDUBI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The court's power in revision is one of the tools for supervision of the lower courts. It is anchored in not only sections 362 and 364 of the Criminal Procedure Code but also under the Constitution at article 165 (6) and (7).
2. While the Criminal Procedure Code restrict the power of revision to the ascertainment whether any order finding or sentence is correct, proper or legal and if proceedings recorded are regular, the Constitution widens that scope and reveal the purpose to be the attainment of fair administration of justice.
3. The court considers the law to give very wide discretion to the court to conduct its supervision of inferior tribunals and courts to ensure the attainment of fair administration of justice. It is that target that must be achieved in any request for revision made before the court. It is important to note that the power is so permissive that the court needs not be moved. It is enough that the matter comes to its attention, of the court in whichever.
4. In this matter, the applicant was charged and convicted on own plea of guilt on four counts of forgery, and obtaining money by false pretences. The forgery related to some loan application form for a company called Mkopa while the money was obtained from self-help groups' some described as, Seniors Self-help group. The total sum lost by the said Self-help groups aggregates to Kshs 127,100 between the period July 26, 2021 and September 8, 2021, a period of just 43 days.



5. After the conviction was entered and facts read out to the applicant, he readily reaffirmed his guilt and offered to refund the sums so fraudulently obtained. In meting out the sentence, the trial court abhorred the conduct of the applicant and opted for a custodial sentence as a means of deterrence.
6. It is that sentence which has aggrieved the applicant and provoked the request for revision, in which the sentence is termed excessive, the young age of the applicant underscored and an allusion is made to the fact that he honestly believed to be employed by the alleged company.
7. The thrust of the application to bring it under the *Criminal Procedure Code* is that the sentence is excessive. That is a fault that goes to the discretion of the trial court in sentencing. The law remains that a supervising court, whether on appeal on revision, ought not to lightly and freely interfere with the decision made upon exercise of discretion unless an outright error in that exercise be demonstrated.
8. The tenure of the sentences to run concurrently is not under challenge hence the question is whether a jail term of three years without an option of a fine is reasonable justifiable or excessive. The sentence prescribed for forgery under section 349 of the *Penal Code* is three (3) years while that for obtaining by false pretences is equally three (3) years.
9. That is the term imposed by the trial court. Nothing has been put forth on why the sentence should be deemed harsh or excessive. To the contrary the trial court noted that the applicant had taken advantage of the vulnerable, innocent village folks, to deprive them of hard earned money. That is a valid and relevant consideration to be taken in sentencing. I therefore find that the sentence is not harsh nor excessive but was and remains intended to serve the object of deterrence in sentencing.
10. However, there was an offer by the applicant to refund or reconstitute the money obtained by him. That offer was termed by the court as not genuine. It is not clear from the record why the court considered the offer ingenuine. That to this court ought to have been taken as a mitigating factor provided the applicant fulfilled his offer. On that basis, the court while holding that the sentence was commensurate with the offence and circumstances of the case, found that the applicant be given the opportunity to effect his offer to effect a refund. On that basis, the orders of the trial court is revised on the following terms and conditions:-
  - (a) The jail terms of three (3) years be reduced to one year on terms that the applicant refunds all the sums received from the complainants within thirty (30) days from today.
  - (b) Upon refund of the said sums the applicant shall execute a cognisance of Kshs 100,000/= to keep peace and be of good behavior for a period of two (2) years from the date he shall have been released from prison.
  - (c) He shall not leave prison before executing the cognisance.
11. Lastly, counsel and parties take a lot of time drafting applications for revision where the remedy should be an expeditious one needing not be lined up with other contested and controverted matters. This court takes the view that filing formal applications for revision miss the object and purpose as an expeditious remedy. It is enough in the spirit of article 159 for a letter to be written to demonstrate the reasons upon which revision is sought. To this court, filing notices of motion for revision does not serve the goals of the law in revision and should be discouraged.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 18<sup>TH</sup> DAY OF NOVEMBER 2022.**

**PATRICK J O OTIENO**

**JUDGE**



**In the presence of:**

Mr Iddi for Shivega for the applicant

Ms Chala for the respondent

Court Assistant: Polycap Mukabwa

