

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. E108 OF 2020

LINCOLN KIVUTI NJERU.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING ON REVISION

1. **Lincoln Kivuti Njeru** the Applicant was convicted on three (3) counts of **stealing by an officer** contrary to **Section 282 of the Penal Code**. He was then sentenced to serve three (3) years on each count. The sentences are to run concurrently. He was sentenced on 21st September 2020, vide Chief Magistrate's Court Milimani in Criminal Case No. 1588 of 2008.
2. He has filed this application under **Article 165 (6), 50(1) and (50) (2)(e) of the Constitution and Section 362 of the Criminal Procedure Code** for review of sentence. The main reason given is that the Applicant is sick. He suffers from acute asthma, and has difficulty in breathing. The fear is that in this era of Covid 19 and the facility where he is, his life could be in danger.
3. A letter from Nairobi Remand Health Centre where the Applicant is held confirms that he is indeed unwell and is weak considering his age of 60 years.
4. **Mr. Kanyoko** for the Applicant reiterated the Applicant's averments. He told the court that the Applicant was ready to pay a fine of Kshs 1 million which was the amount of cash bail he had paid and had not been refunded.
5. It was also shown that the complainant in the case had filed a civil suit for refund of the money and the Applicant was ready and willing to go in for a settlement. He expressed the Applicant's remorse over what had happened.
6. **Mr. Chebii** for the Respondent was not opposed to the sentence review to enable the Applicant pay a fine.
7. The Applicant was first arraigned in court on 4th October 2008 and the case was only finalized on 15th September 2020 (A period of 12 years). This was a very long wait for the Applicant and may have contributed to his current illness.
8. I have considered the Application, averments, submissions, the period of waiting for this matter to be concluded, the Applicant's deteriorating health, and the Probation Officer's report filed on 21st September 2020 before sentence. The Probation Officer's report has also made mention of the Applicant's poor health.
9. It is also noted that the complainant has filed a Civil Suit No. 474 of 2010 (*Commercial & Tax Division Milimani*) for recovery of the money stolen. The Applicant needs to be out there to organize for the refund depending on the outcome of the civil case. As found by the Probation Officer the Applicant is actually a candidate for a non-custodial sentence. The only issue to consider is what non-custodial sentence to give.
10. I have considered the pain and agony he went through as he waited for the finalization of his case for 12 years. I hereby place him on Probation for three (3) years, under the supervision of Macharia P. N. Probation Officer. The conditions are explained to him. His cash bail should be refunded as ordered on 21st September 2020.

Delivered, signed and dated in open court at Nairobi this 8th day of January, 2021.

H. I. ONG'UDI

JUDGE