



REPUBLIC OF KENYA

AT THE HIGH COURT IN NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 153 OF 2019

BETWEEN

TOM ERASTU OMIL ORENG.....APPLICANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Applicant was charged with the offence of obtaining by false pretence contrary to Section 313 of the Penal Code. The particulars of the offence were that on diverse dates between 22nd September 2009 and 2nd November 2009 at Jericho Lumumba Estate within Nairobi are with intent to defraud obtained from Willis Oduor Okumu the sum of Kshs. 650,000/= by falsely pretending that he could sell him a house number AB31-6049 within Jericho Lumumba Estate, a fact he knew to be false.
2. Upon conviction, he was sentenced to pay a fine of Kshs. 200,000/= and compensate the complainant the sum of Kshs. 650,000/= in default serve two years imprisonment. The sentence was passed on 16th November, 2018.
3. The current application was filed on 4th June, 2019 in which the Applicant seeks a revision of the sentence. The main grounds on which the application is premised are that the Applicant is partially blind, hypertensive and has difficulties walking having undergone a surgery on the left knee. He stated that knee is fitted with two plates. He added that he is a father of two children who are suffering in his absence.
4. Learned State Counsel, Mr. Momanyi for the Respondent opposed the application. He argued that the Applicant did not pass out as a person who was remorseful but one who only wanted his interests to be taken into consideration. He urged the court to consider that the complainant lost a considerable amount of money after the Applicant fraudulently represented to him that he was in a position to sell to him a house. Instead of revising the sentence downwards, he urged the court to enhance it by providing a separate jail term of six months in default of paying the compensation.
5. I have accordingly considered the application. I entirely concur with Mr. Momanyi that the Applicant does not present himself as a remorseful person. In fact, he sought leniency only on account of his personal problems. He does not seem to acknowledge that he caused both financial and psychological suffering to the complainant by defrauding him of Kshs. 650,000/=. For this reason, I am of a similar view that he does not deserve leniency.
6. As regards the propriety of the sentence, it is prudent that when two limbs of a sentence are imposed default sentences follow for each of them. Hence, a default sentence in lieu of the compensation ought to have been imposed. This court in exercise of its revisionary jurisdiction was powers to correct the error.
7. In the result, I make the following orders.
 - a. **The Applicant shall pay a fine of Kshs. 200,000/= in default serve one (1) year imprisonment.**
 - b. **He shall further compensate the complainant the sum of Kshs. 650,000/= in default serve one year imprisonment.**
8. The sentences shall run consecutively. It is so ordered.

Dated and Delivered at Nairobi This 6th March, 2020.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person
2. Mr. Mutuma for the Respondent.