



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.515 OF 2020**

*(An Appeal arising out of the conviction and sentence of Hon. Martha Mutuku (CM) delivered on 21<sup>st</sup> January 2020 in Nairobi Criminal Case No. 844 of 2018)*

LEE JONG CHAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

The Applicant, Lee Jong Chan, was convicted of seven counts related to **conspiracy to defraud** contrary to **Section 317** of the **Penal Code**, **theft** contrary **Section 268** as read with **Section 275** of **Penal Code** and **forgery** contrary to **Section 345** as read with **Section 349** of the **Penal Code**. In two of the counts, he was sentenced to pay a fine of Kshs.100,000/- on each count or in default serve six (6) months imprisonment. In the other counts, the Applicant was sentenced to serve custodial sentences ranging from one year to three (3) years imprisonment. The sentences were ordered to run concurrently. The Applicant paid the fines that were imposed. He is therefore serving three (3) years imprisonment. The sentence was meted out on 22<sup>nd</sup> January 2020.

The Applicant made an application to this court seeking to have the period that he was in remand custody (he says it is twenty (20) months) prior to his conviction by the Trial Magistrate's Court, taken into account. The Applicant told the court he was remorseful for the offence that he had committed. He had learnt his lesson in the period that he has been serving custodial sentence. He stated that he was a married man with two children who had undergone pain and suffering since his incarceration. He was a first offender and had been fully rehabilitated in the period of his confinement. He therefore urged the court to exercise its discretion in his favour. Ms. Ndombi for the state submitted that the sentences that were imposed upon the Applicant were lawful and should therefore not be interfered with. The sentences were neither harsh nor excessive.

The court has carefully considered the rival arguments made by the parties to this application. The Applicant is essentially seeking from this court a review of his sentence. He wants the court to take into consideration the facts that he was in remand custody for a period of (20) months prior to his conviction. He was of the view that the Trial Magistrate's Court did not take into consideration that period and hence he invokes the provisions in **Section 333(2)** of the **Criminal Procedure Code** to come to his aid. Is that the correct position from the proceedings? This court does not think so. The complainant in the criminal case lost a colossal sum of Kshs.161 million as a result of the Applicant's criminal activities. The trial court correctly observed that the kind of crime that the Applicant committed calls for an appropriate custodial sentence. This court is satisfied that the court indeed took into account the period that the Applicant was in remand custody prior to his conviction. That ground for review of sentence has no merit and is hereby disallowed.

Regarding whether the period that the Applicant has served custodial sentence, and whether the period is sufficient, this court is of the considered view that the sentences imposed by the trial magistrate's court were neither excessive nor harsh to warrant interference by this court. The sentences that were imposed fitted the crime. To do otherwise would mean that this court will be rewarding the Applicant for offences that he committed. He must pay his just debt to the society during the period decreed by the trial magistrate that he shall remain in custody.

In the premises therefore, the application lacks merit and is hereby dismissed. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2020**

**L. KIMARU**

**JUDGE**