

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. CRIMINAL APPLICATION NO.30 OF 2018

JAMES MBAKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 517 of 2013 of the Chief Magistrate's Court at Chuka).

RULING

1. The State through the office of Director of Public Prosecution has applied revision of sentence handed out on **JAMES MBAKA**, the respondent herein who was found guilty of 4 counts of forgery contrary to **Section 350(1)** of the **Penal Code** and four additional counts of obtaining by false pretences contrary to **Section 320** of the **Penal Code**. The Respondent upon conviction was sentenced to serve 3 years probation, by trial court a sentence the State felt was too lenient and hence this application for revision dated 16th October, 2018.
2. The office of the Director of Public Prosecution has contended that, they called a total of 14 witnesses to prove their case at the trial court and tendered a total of 21 documents as exhibits.
3. This court called for the lower court file with a view to satisfying myself on the legality, correctness and propriety of the proceedings and the sentence passed against the respondent pursuant to the provisions of **Section 362** of the **Criminal Procedure Code**.
4. This court having gone through the proceedings and the Judgment, invited both the applicant and the Respondent to make representations regarding the application for review. The Respondent on his part stated that he had reconciled with the complainant and that he was ready to return back the property to them. However that is not what was before this court. What is before me is whether the sentence meted out against the respondent was legal and proper.
5. The offences for which the respondent was convicted indeed are serious as contended by Mr. Machirah learned counsel for Office of Director of Public Prosecution. Under **Section 350(1)** of the **Penal Code** the maximum sentence for the offence of forgery is life imprisonment. The applicant was charged with counts of forgery and convicted on all the 8 counts after a full trial. In my considered view, the applicant should have saved the trial court's judicial time and the prosecution the trouble of assembling all the witnesses and exhibits to prove their case against him. He ought to have returned the properties to the owner before trial commenced. This court agrees with the applicant that the respondent should have been handed a custodial sentence for the felonious acts he committed against complaint and the trial court failed to pass an appropriate sentence in accordance with the law. The trial court appears to have been unnecessarily influenced by the probation report which was not binding to court and in the end meted a sentence that was not commensurate with the serious offences committed.
6. In the exercise of this court's 3 powers under **Section 364(1) (a)** of the **Criminal Procedure Code** the court sets aside the sentence of 3 years probation passed on the applicant and in its place, sentence him to 3 years imprisonment for counts 4, 6, 8 and 10 and 9 months imprisonment on counts 3,7,11 and 12. The both sentences shall run concurrently.

Dated, signed and delivered at Chuka this 24th day of January, 2019.

R. K. LIMO

JUDGE

24/1/2019

Ruling, dated, signed and delivered in open court in presence of the Respondent in person and Momanyi for applicant.

R.K. LIMO

JUDGE

24/1/2019