

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.855 OF 2018

PETER KIARIE GITU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Peter Kiarie Gitu was convicted of the offence of **stealing by servant** contrary **Section 281** of the **Penal Code**. The particulars of the offence were that on diverse dates between 21st July 2014 and 28th August 2014 at Jamii Bora Bank in Nairobi, the Applicant, being a servant of the said bank, stole Kshs.1,368,515/- the property of the said bank that came in possession of the Applicant by virtue of his employment. The Applicant was sentenced to pay a fine of Kshs.500,000/- or to serve two (2) years imprisonment. The Applicant is serving the default custodial sentence. The sentence was meted out on 29th June 2018.

The Applicant has applied to this court to have the sentence revised so that he can serve a non-custodial sentence. The Applicant contends that the custodial sentence imposed upon him was punitive and excessive in the circumstances. He stated that he had a young family with school going children who are suffering while he is in incarceration. He was the sole breadwinner of his family. Ms. Sigei for the State opposed the application. She submitted that although the Applicant was a first offender, the sentence was extremely lenient taking into account the offence that he had committed. He urged the court to disallow the application.

This court has carefully considered the facts of this case. The Applicant is pleading for the revision of his sentence from a custodial one to a non-custodial one. This court has considered the offence that the Applicant committed. It has also considered the fact that the Applicant's mitigation was considered by the trial court. This court agrees with the prosecution that taking into consideration the nature of the offence that the Applicant committed, the sentence that was imposed upon him fitted the crime. In fact, it bordered on the lenient side. This court will not therefore interfere with the sentence.

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

DATED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2019

L. KIMARU

JUDGE