



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. 383 OF 2018**

JOSEPH OMOLO ORIRA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

**RULING ON REVISION**

1. The applicant, Joseph Omolo Orira, filed a revision on 15<sup>th</sup> October, 2018 seeking a reduction of the sentence to enable him to be released so that he could go home to provide for his family. He further stated that he is a reformed Kenyan and that he has realized his mistakes.
2. Ms Ogwen, Learned Prosecution Counsel submitted that the applicant was sentenced to 3 years imprisonment, for having obtained Kshs. 900,000/= through false pretences together with an Advocate. In her view, the applicant was not remorseful and had not made any offers to retribute the complainant.
3. She further stated that the applicant could not have his freedom and at the same time enjoy the money he obtained by false pretences. She prayed for the revision to be dismissed and for the applicant to serve the 3 years imprisonment that was imposed against him.

**ANALYSIS AND DETERMINATION**

The issue for determination is if the applicant's case is suitable for revision.

4. This court has supervisory jurisdiction over Tribunals and courts subordinate to it under the provisions of Article 165(6) and (7) of the Constitution of Kenya and Sections 362 and 364 of the Criminal Procedure Code. The latter provisions state as follows:-

***“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.***

***364 (1). In the case of proceedings in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to its knowledge, the High Court may-***

***(a) .....***

***(b) In the case of any other order other than an order of acquittal alter or reverse the order.***

***(c) .....***

***(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”***

5. I have perused the lower court file which reveals that the applicant was charged with the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. The particulars of the charge were that on diverse dates between 5<sup>th</sup> November, 2014 and 29<sup>th</sup> May, 2015 at City Grocers Building along Haile Silasie (sic) Road in Mombasa township within Mombasa County, jointly with others not before court obtained from Vivian Amina Radhi the sum of Kshs. 940,000/= by falsely pretending that he was in a position to sell her a plot number 3746/I/MN located at Kongowea, Maweni area, a fact he knew to be false or untrue.

6. The lower court proceedings reveal that the case went to full trial and 2 witnesses testified. The applicant was put on his defence after his Advocate tendered submissions on a case to answer. Judgment was thereafter delivered on 6th December, 2017.

7. The applicant must have been misadvised that this is a matter that could be dealt with in the High Court by way of revision. Revision is a summary procedure that is aimed at dealing with complaints expeditiously, or in matters arising from short sentences that have been imposed on convicts by the lower court.

8. The applicant herein ought to have filed a petition of appeal after which a Record of Appeal would have been compiled for service on the Prosecution Counsel and for this Court to refer to. He would then have proceeded to file his mitigating grounds of appeal.

9. In this instance, what is available are handwritten proceedings of witnesses who testified and the defence tendered by applicant. The Judgment is also handwritten. Going through handwritten proceedings is not anyone's cup of tea as some handwritings are difficult to decipher. It is apparent that the applicant looked for a shortcut to have his matter determined but by so doing he has gone about his matter the wrong way. In a case such as this where evidence was taken, it was imperative for the applicant to have filed his petition of appeal. He would then have requested for fast tracking his appeal as he was sentenced to serve 3 years imprisonment.

10. Due to the foregoing circumstances, this court declines to exercise its discretion to apply its supervisory jurisdiction. There is nothing that was brought out in the application to pin point any anomaly in the ***correctness, legality or propriety of the sentence passed against the applicant.*** The applicant is at liberty to pursue the appeal process.

**DELIVERED, DATED and SIGNED at MOMBASA on this 22nd day of February, 2019.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Applicant present in person

Ms Ogwen, Prosecution Counsel for the respondent

Mr. Oliver Musundi - Court Assistant