

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL REVISION NO.14 OF 2017

(From original conviction and sentence in Criminal

Case No.705 of 2017 of the Senior Resident

Magistrate's Court at Chuka)

MOSES MUTEMBEI MBAYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The applicant herein Moses Mutembei was charged and convicted on his own plea with the offence of preparation to commit a felony contrary to **Section 308 (1)** of the **Penal Code**. He was sentenced to pay a fine of Kshs.30,000/- or serve imprisonment for 4 years. He has now moved this court under **Section 362** of the **Criminal Procedure Code** for review of his sentence citing the following grounds namely:-

- (i) That he is sole bread winner to his family.
- (ii) That he is suffering from Tuberculosis (TB) and that the condition is difficult to manage in prison.
- (iii) That his family is suffering as there is no one to pay school fees for his children as the wife is sickly.
- (iv) That he prays for non-custodial sentence to enable him take care of his family.

2. This court pursuant to the provisions of **Section 362** of the **Criminal Procedure Code** called for the lower court file and having gone through it, I am unable to find any irregularity on the sentence imposed because the sentence provided under **Section 308(1)** under which the applicant was charged prescribes a sentence of between 7 years and 14 years. In fact the applicant was lucky to be handed 4 years with an option of fine (ie Kshs.30,000/-). I also find that the issues he raised in this application were raised on mitigation during trial which I believe informed the trial court's decision to be very lenient to him. I find no reason to interfere with the discretion of the trial court in imposing a sentence it thought appropriate in the circumstances. I believe that the applicant will have an opportunity to reform because a prison being correctional facility will give the applicant humble opportunity to reform. In the premises the application is disallowed the sentence is upheld.

Dated and delivered at Chuka this 28th day of February, 2018.

R.K. LIMO

JUDGE

28/2/2018