

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.10 OF 2018

PENINAH WAIRIMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Peninah Wairimu was convicted of one (1) count of **forgery of an official document** contrary to **Section 345** as read with **Section 351** of the **Penal Code**. She was further convicted of one (1) count of **uttering a false document** contrary to **Section 353** of the **Penal Code**. The Applicant was convicted on her own plea of guilty. She was sentenced to serve two (2) years imprisonment on each count. The sentences were ordered to run consecutively. She has applied to this court for reduction of custodial sentence. She states that she is an elderly woman aged 62 years and was predisposed to stress which had been worsened by her prolonged imprisonment and prison condition. The Applicant pleaded with the court to have the sentence run concurrently instead of consecutively. She stated that she had learnt her lesson and promised to be a law abiding citizen should the court accept her plea for reduction of sentence. For added measure, she stated that she was the sole bread winner for her family.

During the hearing of the application, the Applicant told the court that the trial court did not take into account that she had been in remand custody for a period of six (6) months prior to her conviction. She pleaded with the court to exercise leniency on her as she has learnt her lesson in the period that she has been in prison. Ms. Atina for the State did not oppose the application for reduction of sentence or the Applicant's plea that she serves a non-custodial sentence. She urged the court to take into account the fact that the Applicant pleaded guilty to the charges and thus saved precious judicial time. She was persuaded that the Applicant's application was deserving of favourable consideration by the court.

When the trial magistrate sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal. In the present application, it was clear to this court that the trial magistrate properly exercised her discretion when she sentenced the Applicant to serve the custodial sentence. Prior to sentencing the Applicant, the trial magistrate called for probation report to be prepared. The probation report was not favourable. In the circumstances, this court cannot fault the trial court for reaching the verdict that it did.

However, this court takes into consideration that since her incarceration, the Applicant has been in prison for a period of one (1) year and (6) six months. As correctly observed by Ms. Atina, the fact that the Applicant pleaded guilty to the charges that were brought against her showed that she was remorseful from the word go and was prepared to pay for the crimes that she had committed. This court is of the view that the period that the Applicant has been in lawful custody is sufficient punishment as a result of which the custodial sentence that she was ordered to serve is commuted to the period already served. She is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF MARCH 2018

L. KIMARU

JUDGE