REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

CRIMINAL REVISION NO. 21 OF 2017

(From original conviction and sentence in Criminal Case

No. 1743 of 2012 of the Chief Magistrate's Court at Naivasha)

NICHOLAS IRUNGU MWANGI.....APPLICANT

- VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. On 11/7/2017 the Applicant herein withdrew his application for leave to file appeal out of time. The Applicant had been tried jointly with three others on seven counts.

2. The first charge was Obtaining money by false pretences contrary to Section 313 of the Penal Code. In that between 13th day of July 2011 and 1st August 2011 at Uganda House along Kenyatta Avenue in Nairobi City within Nairobi County, jointly with intent to defraud, obtained from Kadeki Welfare Group the sum of Kshs 950,000/= by falsely pretending that they had sold a land parcel number **KIJABE/KIJABE BLOCK 1/2838** to them, information they knew to be false or believed to be untrue.

3. In the 2nd to 7th counts the Applicant was charged alone. The 2nd Count was Making a false document contrary to Section 357 (a) of the Penal Code. The 3rd and 6th counts were Forgery contrary to Section 350 of the Penal Code. The 4th and 7th counts were Uttering a false document contrary to Section 353 of the Penal Code. The 5th was Making a document without authority contrary to Section 357 (a) of the Penal Code.

4. The Applicant was convicted on all the counts and sentenced to 3 years on each count. The sentences were to run concurrently.

5. I have called for and reviewed the proceedings in the lower court file. This is not a suitable matter for revision. The issues raised in the Applicant's so-called Chamber Summons filed on 6/1/2017 are mitigatory factors that were presented at the conclusion of the trial. Sentencing is an exercise of discretion by the trial court and this court can only interfere based on well-known principles. These were set out in several decisions.

6. In the case of **Ogalo s/o Owuora -Vs- Republic [1954] 19 EACA 270**, it was stated:-

"(1). The Court does not alter a sentence on the mere ground that if the member of the Court had been trying the Appellant, he might have passed a somewhat different sentence, and it would not ordinarily interfere with the discretion exercised by the trial Magistrate unless it is evident that the Magistrate acted upon some wrong principles or overlooked some material factors. (See also JAMES VS REPUBLIC (1950) 10 EACA 147)

(2). The test criterion is that if the sentence is manifestly excessive in view of the circumstances of the case, the sentence will be disturbed. The Appellate Court should not interfere with the sentence of a lower Court unless it is satisfied that the same was so severe as to amount to a miscarriage of justice. (SEE NILSON VS REPUBLIC (1970) EA 599)."

7. Further in **Wanjema -Vs- Republic (1971) EA 493**, the court stated that:-

"[The] Appellate court should not interfere with the discretion which a trial court extended as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factors, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case."

8. There is no evidence that the court erroneously exercised its sentencing discretion. Neither is there any material before me to so suggest. In light of the nature of the offences and the evidence in the lower court it is difficult to justify interference with the sentences of the lower court. The sentences were legal and proportionate. I therefore decline to interfere with the sentences meted out against the Applicant.

Written and signed at Naivasha this **27th** day of **July**, **2017.**

C. MEOLI

JUDGE