

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. 399 OF 2015

MICHAEL ADIEDO OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The original record of proceedings of the trial court has been forwarded to this court pursuant to **Section 362 of Criminal Procedure Code** so that this court can examine the record of the proceedings with a view to satisfying itself as to the correctness, legality or propriety of the sentence or order passed by the subordinate court.

The Applicant was charged vide Nairobi Chief Magistrate's Court Criminal Case No. 2034 of 2009 with four counts of forgery contrary to **Section 349 of the Penal Code** and three counts of stealing by servant contrary to **Section 281 of the Penal Code**. He was convicted in all the eight counts and sentenced to two years imprisonment in respect of counts I, II and III and in counts IV to VII, four years imprisonment. All sentences were to run concurrently.

By way of Chamber Summons filed under a Certificate of Urgency on 16th November, 2015, the Appellant requested the court to revise the sentence and prefer against him a non-custodial sentence. He stated that he was in the process of finalizing his Masters Degree at Maseno University where he was undertaking a Degree in Research Methods. By the time of his conviction, he had paid school fees of Kshs. 66,000/= which he stood to lose if he did not continue with his studies.

The application was opposed by the learned counsel Ms. Atina. She submitted that the complainant bank being Barclays Bank where the Applicant worked lost Kshs. 26 million due to the theft by the Applicant. According to Ms. Atina, the sentence in respect of the offence of stealing by servant was lenient as the same attracted an imprisonment term of seven years. Furthermore, all the sentences were to run concurrently which was quite reasonable. Ms. Atina further told the court that the Applicant is in a position to study the Masters Degree online. She urged the court to dismiss the application.

This court requested for a Probation Officer's Report which I have had a through look at. The same portrays the Applicant as a person who has accepted his mistake and is ready to reform and change his behaviour. As reflected by the report dated 16th February, 2015, the Applicant is ready to abide by the terms of non-custodial sentence. He only has eight months to complete his sentence which this court finds as suitable period for conversion into a non-custodial sentence. Accordingly, I allow the application. I substitute the custodial sentence with an order that the Applicant serves a two years probation period under the supervision of the Probation Officer one, Muturi Jane W. based at Nairobi Milimani Courts.

It is so ordered.

DATED and DELIVERED this 17th day of February, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person

2. M/s Atina for the Respondent.