

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.97 OF 2016

ROBERT ODHIAMBO OKETCH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to **Section 362 of the Criminal procedure Code**, the original trial court file in the Chief Magistrate's Court at Nairobi **Cr. Case No. 869 of 2012, Republic Vs Robert Odhiambo Okech**, has been forwarded to this court for purposes of the court satisfying itself as to the correctness, legality or propriety of the sentence passed and as to the regularity of the proceedings. The Applicant was the accused and was charged with the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. It was alleged that on diverse dates between 28th March, 2012 and 18th April, 2012 at Sunview Estate along Mbagathi Way within Nairobi County, jointly with others not before court with intent to defraud, obtained cash Kshs. 1,178,000/= from Monica Munyae Sundi by falsely pretending that he was in a position to import for her a motor vehicle make Mercedes Benz C-200 from Japan a fact he knew to be false. He was tried, found guilty and sentenced to 12 months imprisonment.

By Chamber Summons filed in person on 8th March, 2016, he urges the court to set aside the custodial sentence and prefer an option of a fine. The court ordered for a probation officer's report and the same was duly filed on 5th May, 2016 by Mr. Adika M.M., Probation Officer at Milimani Court office. The said report is favourable to the Applicant. It depicts the Applicant as positive towards rehabilitation. He admits to committing the offence and was amenable to an out of court settlement between himself and the complainant. He has also undergone various counseling sessions while serving sentence. His skill has enabled him to resolve various conflicts amongst the inmates. It is also indicated that he has a fixed abode and it would be possible to supervise him on a non-custodial sentence. Given this background, I would prefer a non-custodial sentence specifically under Community Service Orders. I accordingly set aside the custodial sentence and substitute it with an order that the Applicant shall serve the sentence under the Community Orders Act. I direct the Probation Officer, Mr. Adika to report back to the court on 25th May, 2016 on the preferred location that the Applicant can serve under C.S.O.

DATED and DELIVERED this 18th day of MAY, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

Applicant in person

Miss Nyauncho for the Respondent