

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.110 OF 2016

PHILLIP MUNENE MWANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was charged with stealing contrary to Section 268 as read with Section 275 of the Penal Code. The particulars of the offence were that on the 16th of January 2013 at Jomo Kenyatta international Airport within Nairobi County stole US Dollars 10000 and Kshs. 84,000/= totaling to 915,000 /= the properly to Sadeq Abdulbari Ali Ali. He was convicted and sentenced to serve 2 years imprisonment on 13th January, 2015.

The Applicant has come to this court for the revision of sentence under Section 362 of the Criminal Procedure Code. He filed a Chamber Summons application on 13th April, 2016. He pleads that he is a first offender, was misled by his workmates to commit the offence, that he has a family for which he is the sole breadwinner, that he has learnt the mistakes of committing an offence and that the sentence was harsh and excessive in the circumstances.

Under Section 275 of the Penal Code, he was liable to imprisonment for 3 years. In that regard the sentence imposed was lawful. A look at the record however shows that the trial magistrate failed to give him an opportunity to mitigate. Mitigation constitutes a part of the requirement for a fair trial. Although it does not vitiate a conviction it is a requirement that persuades the trial court to consider factors that may mitigate a lenient penalty. In the instant case, the learned trial magistrate upon conviction, went ahead and sentenced the Applicant without giving him an opportunity to mitigate. In that case, and in my view, he may have handed a harsh sentence. I say so because taking into account the amount of money that was involved, was not such a large amount as to warrant a 2 years jail term. Having been sentenced on 13th January, 2015 the Applicant has already served 1 year and 8 months jail term. That period in my view is sufficient punishment.

In the end, the application succeeds. I set aside the 2 years jail term and substitute with an order that the Applicant has served sufficient punishment and is hereby forthwith set free unless otherwise lawfully held. It is so ordered.

DATED and DELIVERED this 26th day of September, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person
2. M/s Sigei for the Respondent