

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 221 OF 2015

REPUBLIC.....APPLICANT

VERSUS

VIRGINIA NJOKI MURIUKI.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 243 of 2010 from the Chief magistrate's Court at Kibera)

RULING

Pursuant to Section 362 of the Criminal Procedure Code, this file is forwarded to this court so that the court can satisfy itself as to the correctness, regularity, legality and propriety of the sentence imposed on the Applicant in the Chief Magistrate's Court at Kibera, Criminal Case No. 243 of 2011 Vs Virginia Njoki Muiruri.

The Applicant was charged with two counts, namely;

Count I: Making a document without authority contrary to Section 357(9) of the Penal Code.

Count II: Uttering a document with intent to defraud contrary to Section 357(b) of the Penal Code.

She was found guilty in both counts and sentenced to serve one year imprisoned on each count. The sentences were to run concurrently. By a letter by Macharia wa Muturi & Co. advocates for the Appellant dated 2nd November, 2015, the court is requested to reduce the sentence on grounds that the Applicant was a first offender. She is of poor health which is deteriorating in prison and that she has three children and is the sole bread winner of the family as her husband is deceased.

Attached to the letter is a copy of a Death Certificate in respect of one David Njoroge Mukundi, the Applicant's husband, school documents for the Applicant's son one John Muiruri Mukundi from Kiereini Boys School and hospital treatment notes from Gatundu Hospital and Ng'enda Health Centre where the Applicant has been treated for arthritis and chronic gastritis.

Under Section 357(a) of the Penal Code, any person who is found guilty of making a document without authority is liable to imprisonment for seven (7) years. The same penalty applies to a person who is found guilty of uttering a false document under Section 357(b) of the Penal Code.

It follows then that the penalty imposed on the Applicant was lenient as both offences are classified as felonies. However, since the Applicant was a first offender the option of a non-custodial sentence ought to have been preferred. As for health, the Applicant can be availed medical treatment while in prison. It is important to emphasize that a custodial sentence should be imposed as a last resort. In an effort to decongest our prisons, I shall revise the sentence as under.

I hereby set aside the one year imprisonment penalty. I substitute it with an order that the Application

shall pay a fine of Kshs. 60,000/= in default serve 12 months imprisonment in respect of each of the counts. The sentences shall now run consecutively and are effective of the date of sentencing of the trial court.

DATED and DELIVERED this 24th day of **November, 2015.**

G.W. NGENYE-MACHARIA

JUDGE