

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 60 OF 2015

ROBERT NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Notice of Motion filed on 4th May, 2015, the Applicant prays that the court reduces or reviews sentence imposed on him in the Chief Magistrate's court at Milimani Criminal Case No. 1049 of 2010. In that case, he was charged with 6 counts of obtaining money by false presentences. He was convicted in counts I, II, II, IV and VI and sentenced to pay a fine of Kshs.50,000/= in default serve six months imprisonment in each of the counts respectively. All the sentences were to run consecutively.

His plea to the court is that he has been in prison for the last five years. He has since learnt some skills which would help him build a career once he left the prison. The skills include, stress management, self awareness, alcohol and drug abuse, farming and small entrepreneurship. In the latter, he has learnt how to make disinfectants, soap detergents and drinks such as yoghurt. He pleaded with the court that he was married and was the sole bread winner of the family.

The application was opposed by learned state counsel Ms. Atina who submitted that the Applicant was not a first offender as he had been convicted at Limuru Law Courts in Criminal Case No. 1485 of 2008 for five counts of obtaining money by false pretences on 26th October, 2010. He was serving 15 years jail term in that case.

Under Section 362 of Criminal Procedure Code, this court is required to satisfy itself as to the correctness, legality, or propriety of the lower court record and in this case the sentence passed by the court. The sentence imposed by the learned trial magistrate was legal and to some extent lenient since under Section 313 of the Penal Code, any person who is convicted for the offence of obtaining by false pretences is liable to imprisonment for 3 years. Given the amounts that were involved in each of the courts, being Ksh.100,000/=, the fine for Kshs.50,000/= was reasonable. More importantly is that the Applicant was given the option of paying a fine as opposed to exclusive jail term. I also take note of the fact that he was not a first offender as he had been convicted for similar offences. This demonstrated that he had not been remorseful and was not ready to change his behavior. Therefore, notwithstanding that he has learnt some skills in the prison that will help him start up a business once he left prison, the circumstances of the case do not call for a revision of the sentence. The application is accordingly dismissed.

DATED and DELIVERED this 14th, day of **December, 2015.**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person*

2. *M/s Atina for the Respondent.*