



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 12 OF 2014
LINTONS CHILEO DZOMBO.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING ON REVISION

The Applicant vide a letter dated 18th March, 2014 did call for the revision of the Judgment by Honourable Odenyo Senior Principal Magistrate dated 2nd January, 2014 for reasons that the applicant was Sentenced to two (2) years imprisonment with no option of fine whereas the Co-Accused was Sentenced to three (3) months Community Service.

The two accused persons were jointly charged with stealing by servant contrary to section 281 of the Penal Code.

The particulars being that:-

“On the 21st day of March, 2011 at Voyager Hotel in Nyali – Mombasa County they jointly stole croma fats 5 kilogrammes, Neebol 5 kilogrammes, 2 Taifa wheat flour all valued at Ksh. 1,630 the property of Voyager Hotel which came into their possession by virtue of their employment”.

The first Accused pleaded guilty to the charges and was Convicted and Sentenced to three (3) months Community service.

The 2nd Accused pleaded not guilty and his case proceeded to full hearing and determination and was thereafter Convicted and Sentenced to two (2) years imprisonment.

It is noted that the first Accused did not waste Judicial time. The 2nd Accused cannot be faulted either because under article 50 of the Constitution he is entitled to a fair hearing.

This Court takes the view there should be some measure of balancing in Sentencing more so where two Accused persons are found guilty and convicted from the same facts in the same case. Justice must not only be done but it should be seen to have been done.

It is with this in mind that I call for a probation report for the 2nd Accused.

Mention on **7th April, 2014.**

Ruling delivered dated and signed this **26th** day of **March, 2014**.

.....

M. MUYA

JUDGE

26TH MARCH, 2014

In the presence of:-

Learned State Counsel Miss Fundi

Learned Counsel for the Applicant Mr. Nabwana

Court clerk Musundi