



**REPUBLIC OF KENYA**

**High Court at Meru**

**Revision Case 15 of 2013**

**AHMED MOHAMMED SHARIFF .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Court's attention was drawn to this case by M. Koronge & Co Advocates in which the accused Ahmed Mohammed Sheriff was convicted of one count of Theft by Agent contrary to section 283 (c) of the Penal Code. The accused was convicted after a full trial, and sentenced to one year's imprisonment.

I have perused the record of the proceedings, judgment and sentence of the lower court. The trial court took evidence in the case from both sides after which he came to the conclusion that an offence as charged had been proved as against the Applicant. He proceeded to convict him. The learned trial magistrate sentenced the Applicant to imprisonment for 12 months without an option of fine. It is this sentence that this court has been asked to review.

After considering the application I decided to invite the Applicant to make submissions before me in order to arrive at an informed decision. Mr. Otieno appeared for the Applicant while Mr. Mungai appeared for the Respondent. In his submission Mr. Otieno urged that the Applicant was seeking a review of the sentence for reason he was not given an option of a fine. Counsel urged that the court did not consider the fact the Applicant had purchased the goods for the complainant and that it was he who failed to collect them. Mr. Otieno urged that the Applicant was ready to compensate the complainant by paying the entire sum of 300,000/- which was the subject of the charge before the lower court.

I have carefully considered the review application by the Applicant herein. The court has been moved under its powers of review as envisaged under Article 50(2) (q) of the Constitution to review the sentence imposed against the Applicant. That Article stipulates:

**“(2) Every accused person has the right to a fair trial, which includes the right—**

**(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law”.**

The powers of review are limited to those prescribed under the Criminal Procedure Code, sections 354 and 364. Section 283 (c) of the Penal Code provides that a person convicted under that section is liable to a sentence of 7 years imprisonment. In this case the Applicant was sentenced to one year's imprisonment. Under section 354(3) (b) of the Criminal Procedure Code, the powers of the High Court are set thereunder in regard to an appeal against the sentence as follows:

**“354. (1) At the hearing of the appeal the Applicant or his advocate may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court.**

**(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may**

**(b) In an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;**

**Provided that where the appeal is on some ground involving a question of law alone, he shall not be entitled to be present except with the leave of the High Court.”**

The powers of the High Court on revision are further set under Order S.364 of the CPC.

**“364. (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may**

**(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.”**

In this case section 364 (3) by implication provides that the High Court’s powers on revision or review are limited to maintaining the sentence imposed by the subordinate court or reducing or doing away with it altogether, subject of course to sub-section(2) and its proviso thereto. In other words, unless the sentence as passed is illegal, a High Court exercising its powers of revision or review cannot act to cause the Applicant to suffer a greater punishment than the trial court had imposed.

In the instant case the Applicant has sought the court to vary the sentence on account of three factors. The first one is the fact Applicant was not given an option of fine. The second one is fact the Applicant had maintained that he had purchased the goods in question and that the complainant had failed to collect the same. The third one is the fact the Applicant has offered to refund the sum stolen as per the charge sheet.

I have considered that the Applicant was charged with the offence of Stealing by Agent. I have considered that the Applicant has offered to refund the sum the subject matter of this case. The Applicant is a first offender. He has served one month and one week of his sentence. The Applicant is a young person. Going by the proceedings of the case it appears that there was a business misunderstanding between the Applicant and the complainant of the case. That misunderstanding is of civil nature. Since the Applicant has offered to refund to the complainant the entire amount that was the subject of the case I am satisfied that, that gesture is proof of remorse on the Applicant’s part. I will allow the applicant’s for review against the sentence by varying it as follows:

**1. Upon deposit with this court of the sum of Kshs.300,000/= the sentence of one year’s imprisonment be suspended unconditionally.**

**2.Upon deposit of the Ksh.300,000/= in (1) above the same should be released to the complainant of this case one Shahab Ahmed, a Pakistani National upon sufficient identification to be verified by a Deputy Registrar of this court.**

**3.The Applicant and/or his counsel to assist in getting the complainant.**

**4.If the sum ordered in (1) above is not paid within 14 days of today the Application herein will stand dismissed and the Applicant will serve the remaining sentence.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 15<sup>TH</sup> DAY OF MARCH, 2013.**

**LESIT, J.  
JUDGE**