



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 60 OF 2011**

**GERALD NEVILLE OGUNAH .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

1. The applicant has come before this court for orders of revision of the sentences imposed upon him in **Cm Cr. Case No. 2276 of 2009** on 31<sup>st</sup> December. In the said case he was convicted in five counts of obtaining money by false pretences contrary to **Section 313** of the **Penal Code**.

2. Upon conviction the learned trial magistrate sentenced the applicant as follows:

**Count I:** a fine of Kshs.150,000 in default 18 months imprisonment;

**Counts II, III, IV and V** a fine of Kshs.100,000/= each in default 12 months imprisonment.

The sentences were ordered to run consecutively.

3. The applicant is not contesting any of the convictions by the learned trial magistrate, but submits that due to financial hardships he was not able to raise the money for fine. That the offences were similar in nature, were all tried under one trial, and that they were all committed under RITZ INVESTMENT. He submitted that he was very remorseful and urged the court to consider that he had been in custody for 48 months, was the family breadwinner with 3 young children, and his family was broken due to the long sentence. He also averred that he had reformed through various prison programmes, the technical training imparted on him and counseling.

4. Mr. Kadebe the learned State Counsel on his part, submitted that the sentences were proper and legal, and argued that the sentences should run consecutively because the offences were committed on diverse dates and in relation to different individuals, and did not form part of the same transaction. He urged the court to uphold both convictions and sentences.

5. I note that the applicant obtained in total Kshs.1,820,000/= from the various complainants and that that money was never recovered. Each transaction was distinct and complete and resulted in a separate offence. None of the offences were part of the same transaction. The ease and frequency with which the applicant obtained the monies from his victims points to a person who had perfected the act of committing this particular type of offence and had made it a habit.

6. Whereas I am glad that the applicant's time in prison has not been in vain since he claims to be a reformed man, he also needs to learn the lesson that actions have consequences. I am satisfied that the sentence of fine totaling Kshs. 550,000/= imposed upon the applicant in default of which he is to serve a total of 5½ years imprisonment is in consonance with the gravity of the offences for which he was convicted.

7. None of the grounds provided under **Section 362** of the **Criminal Procedure Code** upon which the High Court may call for and examine and revise the orders of a subordinate court have been demonstrated to exist in the case before me to persuade me to revise the sentence imposed by the trial court.

Reasons wherefore the application is dismissed in its entirety.

**SIGNED DATED** and **DELIVERED** in open court this **28<sup>th</sup>** day of **May 2013**.

**L. A. ACHODE**

**JUDGE**