

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CR. REVISION NO. 175 OF 2012

(Arising from Kericho CM Criminal Case No. 683 of 2012)

LILIAN MAHUGU MUHANDA APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

Pursuant to the application for review dated 20th June, 2012, Lilian Mahugu Muhanda, the Applicant herein, applied to this court to exercise its supervisory power of revision in her favour. Consequently, the proceedings relating to **Kericho C.M.C.Cr. C No. 683 of 2012** were placed before this court for perusal under **Section 363** of the **Criminal Procedure Code**.

The proceedings presented to this court show that on 8th June, 2012, the applicant pleaded guilty to a charge of stealing by servant contrary to **Section 281** of the **Penal Code** and the trial Chief Magistrate thereafter convicted the applicant. Before sentencing, the learned Chief Magistrate called for a Community Service Order report. The report was presented to the court on 14th June, 2012 in which it was recommended that a custodial sentence was the most appropriate in the circumstances. The trial court considered the report and proceeded to sentence the applicant to serve three(3) years imprisonment. In her application, the applicant avers that the sentence meted out against her is harsh and excessive in view of the fact that she was a first offender and that she was remorseful. It would appear from the application that the applicant does not intend to challenge the order on conviction. Her main complaint is in respect of the sentence. The law under **Section 348** of the **Criminal Procedure Code**, does permit a person convicted on his/her own plea of guilty to appeal except as to the extent or legality of the sentence. In the case before this court the applicant has pointed out that the sentence meted out against her is harsh and excessive. It is also the applicant's contention that the trial Chief Magistrate failed to take into account the fact that she was a first offender and remorseful. In essence she is saying that the trial court did not consider certain principles of sentencing. In my humble view the grounds set out on the face of the application for review are those envisaged under **Section 348** of the **Criminal Procedure Code** to entitle the applicant to appeal. In sum, the applicant has a right of appeal.

Having come to the conclusion that the applicant has a right of appeal in these proceedings, under **Section 364(5)** of the **Criminal Procedure Code**, the law does not permit this court from entertaining an application for revision filed by the applicant personally. Consequently, the application for review dated 20.6.2012 is incompetently before this court. The same is ordered struck out. Not all is lost for the applicant since she can pursue the available remedies in law if well advised.

Dated, signed and delivered this 8th day of August, 2013.

J.K. SERGON

JUDGE