

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL REVISION NO. 4 OF 2011

ENOCK MWAMBIA KINGOINA.....APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

ORDER ON REVISION

Having called and perused the record of the trial court I am not satisfied that this is a fit and proper case for revision. The applicant was charged with obtaining money by false pretences contrary to section 313 of the **Penal Code**. He pleaded not guilty to the charge and he was subsequently tried, found guilty, convicted and sentenced to 18 months imprisonment. The applicant now seeks revision of the above conviction and sentence on the grounds that there was no evidence that he obtained or converted the amount, nor was the amount obtained fraudulently, the prosecution evidence was incongruous and wanting, the applicant's defence was disregarded and finally that in view of the policy of decongestion of our prisons and mitigation adduced, at worst a non-custodial sentence could have been prudent and or a fine. Otherwise the sentence meted thereof was excessive and unwarranted.

An order of revision can only be made where the proceedings in the subordinate court are found to be incorrect, illegal, suffers from impropriety and or are generally irregular. I do not discern such misgivings in the circumstances of this case. There is nothing illegal, irregular or incorrect with regard to the conviction and sentence of the applicant. The proceedings and subsequent sentence were perfectly legal. The issues as to whether the conviction was proper and sentence imposed manifestly harsh and excessive are appealable. Section 364 (5) of the **Criminal Procedure Code** is explicit that ***"When appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed"***. This is the quandary the applicant finds himself. His remedy lies in the appeal and not revision. That being my view of the matter, revision sought is denied.

Revision dated, signed and delivered at Kisii this 25th day of February, 2011.

ASIKE-MAKHANDIA

JUDGE