

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NO. 44 OF 2004

**(From original Order in Criminal Case No. 4611 of 2004 of The Chief Magistrate's Court
at Kibera)**

LILIAN CHEBET KIPCHOGE.....APPLICANT
VERSUS
REPUBLICRESPONDENT

ORDER ON REVISION

The Kibera Senior Principal Criminal Case No. 4611 of 2004 was brought to my attention for purposes of satisfying myself as to the correctness, legality or propriety of any finding sentence, or order under Section 362 of the Criminal Procedure Code. In that trial, the accused person pleaded guilty to the counts of THEFT BY SERVANT contrary to Section 281 of the Penal Code.

She was convicted on both counts and sentenced to a fine of 20,000/- in default 12 months imprisonment on each count. Having considered the order of sentence imposed by the trial court, I find it was illegal. Section 28(2) of the Penal Code provides the maximum sentences a court can impose in default of fines imposed. For a fine of 20,000/-, the maximum default sentence a court may impose is six months imprisonment.

The sentence imposed by the trial court was therefore illegal to that extent. Accordingly I set aside the sentence.

I did consider that the Applicant was house help for two Complainants. A fine as imposed by the trial court was excessive in the circumstances. I have gone further and considered the facts of the Prosecution case as led by the court prosecutor. In my view, they do not disclose an offence and further, exhibits alleged to have been recovered from the Applicant were not produced or identified in court. In the circumstances the plea of guilty entered against the Applicant was equivocal. Accordingly I quash the conviction entered. I direct that the Applicant be produced before Kibera Court on the 25th October 2004 for a plea in this case.

Orders accordingly.

Dated at Nairobi this 19th October 2004

LESIIT

JUDGE

Order:

Registry inform Mr. Kiage Advocate of court's order in revision.

LESIIT

JUDGE