



**Kiunjuri v Republic (Miscellaneous Criminal Application E102 of 2023)
[2024] KEHC 2005 (KLR) (Crim) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2005 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E102 OF 2023
K KIMONDO, J
MARCH 4, 2024**

BETWEEN

SIMON MUNGALA KIUNJURI APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from the sentence in Milimani Criminal Case 003 of 2015
by Z. Abdul, Senior Resident Magistrate, dated 7th November 2022)*

RULING

1. The applicant was adjudged guilty of obtaining money by false pretenses contrary to section 313 of the [Penal Code](#) and sentenced to imprisonment for 2 years. It is instructive that the judgment was read in absentia; the applicant having absconded court for a considerable period. He was subsequently re-arrested and sentenced.
2. The applicant now seeks revision of the sentence through an amended notice of motion dated 31st August 2023. He pleads for early release or a community service order. He deposes that he is elderly and ailing; that he is a first offender; that there was miscommunication which led him to miss court sessions; and, that he had previously observed all the terms of his bail. But there is a contradiction because on the date of his sentence, he informed the court that he missed the court sessions because he was “unwell”.
3. At the hearing of the revision on 22nd February 2024, his learned counsel, Mr. Kanya, informed the court that subject to earning remission, the applicant was due for release in a fortnight.
4. My view is as follows. Under sections 362 to 364 of the [Criminal Procedure Code](#), the High Court is imbued with wide powers to revise the sentence passed by the subordinate court.



5. I have closely studied the judgment and the impugned sentence. The applicant and a co-accused obtained Kshs 885,000 from the complainant by falsely pretending that they would supply 15,000 litres of furnace oil to Mabati Rolling Mills, a fact they knew to be false. The applicant did not lodge any appeal against the conviction or sentence. Fundamentally, he only pleads for leniency on the grounds I set out earlier.
6. From the earlier probation report dated 18th April 2016, the applicant was then aged 53 years. Logically, he is now about 61 years. Although he deposes that he suffers from “stress disorder, diabetes and high blood pressure”, no medical records were attached.
7. Considering the nature of the offence and the sums obtained, I find that the crime called for a deterrent sentence. The punishment meted out by the learned trial magistrate was well within the law and I decline to disturb it or to grant an early release.
8. The upshot is that the request for revision is unmerited. The amended notice of motion dated 31st August 2023 is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

The applicant.

Ms. Ndombi for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Aketch for the applicant instructed by Anya Kalwa & Company advocates.

Mr. E. Ombuna, Court Assistant.

