



REPUBLIC OF KENYA



**Mbugua v Republic (Criminal Revision E814 of 2024)
[2024] KEHC 8323 (KLR) (Crim) (8 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E814 OF 2024
K KIMONDO, J
JULY 8, 2024**

BETWEEN

JAMES KINYANJUI MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

(Revision from the sentence in Makadara Criminal Case No. 670 of 2022 by H. Onkwani, Senior Principal Magistrate on 1st March 2024)

RULING

RULING

1. The applicant pleaded guilty to the charge of obtaining money by false pretenses contrary to section 313 of the [Penal Code](#). He was sentenced to imprisonment for 2 years.
2. The revision now seeks for reduction of the sentence; or, for a non-custodial sentence. There is also a prayer for credit for the period spent in remand custody.
3. The applicant avers that he has a family of three children who look up to him and that he has reformed over time. He now prays for an opportunity to rejoin the society.
4. I called for the records of the subordinate court. Being a revision, and by dint of section 365 of the [Criminal Procedure Code](#), no party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.
5. The applicant defrauded the complainant (who was working in Qatar) of the sum of Kshs 1,400,000 by pretending that he would construct an apartment for her, a fact he knew to be false. The sums were



wired into his mobile wallet. There has been no restitution. Granted the gravity of the offence, the sentence of 2 years was quite lenient and I decline to reduce it.

6. However, section 333 (2) of the *Code*, obligates the sentencing court to take into account the period spent in remand custody. In *Abamad Abolfathi Mobammed & another v Republic*, Court of Appeal at Nairobi, Criminal Appeal 135 of 2016 [2018] eKLR, the learned judges of the Court of Appeal called for a “more meaningful” application of that provision of the law.
7. The applicant was arrested on 5th February 2022. He took plea on 14th February 2022 when he denied the charge and was granted bail. The surety was approved on 7th March 2022. He however failed to attend court on July 26, 2022 and the bond was cancelled. He was presented to court months later on April 5, 2023 under a warrant of arrest. He subsequently pleaded guilty to the charge on February 28, 2024 and was sentenced on 1st March 2024.
8. The trial court did not credit him with any time spent in remand custody. Pursuant to section 333 (2) of the *Criminal Procedure Code*, I order that a total of 362 days spent in both police and prison remand be deducted from the sentence. The applicant and the Director of Public Prosecutions shall be immediately notified of this order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY 2024.

KANYI KIMONDO

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Ruling read in chambers in the presence of-

Mr. Edwin Ombuna, Court Assistant.

