



REPUBLIC OF KENYA



**Njoki v Republic (Criminal Revision E281 of 2022)
[2023] KEHC 2756 (KLR) (Crim) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E281 OF 2022
JM BWONWONG'A, J
MARCH 15, 2023**

BETWEEN

JOSEPH GITAU NJOKI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the sentence delivered by Hon. B. Ochoi, S.P.M, on 26th July 2022 in Milimani Chief Magistrate's Court Criminal Case No. 419 of 2020 Republic vs Joseph Gitau Njoki)

RULING

1. The applicant filed a notice of motion dated November 7, 2022 seeking revision of his sentence.
2. In the matter before the trial court, he was convicted of the offence of obtaining money in the sum of Shs 160,000/- by false pretences contrary to section 313 of the penal Code (cap 63) Laws of Kenya.
3. He was sentenced to serve two (2) years imprisonment. The sentence was to run from the date of his arrest.
4. His application is grounded on the averments set out in his affidavit, which are as follows. He is a first offender and deserves leniency. He is remorseful for the offence committed. He is the sole breadwinner in a family of four school going children and ageing parents. His wife possesses little formal education and is unable to sustain their dependants. The trial court failed to consider the option of a non – custodial sentence. He undertakes not to engage in criminal activity. He urged the court to revise his sentence to enable him rejoin his family.



The Applicant's Oral Submissions

5. The applicant submitted that the court should sentence him to pay a fine. That he has been in pre-trial remand custody for 8 months. He has also prayed for a reduction of his sentence.

The Respondent's Oral Submissions

6. Ms Chege learned prosecution counsel submitted that the applicant absconded bond during his trial. Further that his sentence was to commence after his arrest on July 26, 2022.

Analysis and Determination

7. The power of this court in its revisionary jurisdiction is founded under section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

Article 165 (6) of the *Constitution* of Kenya provides that:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

8. On the merits of the application, the applicant seeks a review of his sentence. The trial court had sentence him to two years imprisonment. The applicant has argued that he has reformed. He prays for leniency. Further, he has also that the trial court failed to consider the option of a fine while sentencing him.
9. The applicant's application essentially seeks the exercise of this court's discretion on sentencing him. This court may only interfere with the exercise of discretion by the trial court, if it determines that that discretion was wrongly exercised. The Court of Appeal in *Abmad Abolfathi Mobammed & Another vs Republic* Criminal Appeal No 135 of 2016 (unreported) held on Page 25 as follows:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this court will normally not interfere with the exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In *Bernard Kimani Gacheru v Republic*, Cr App No 188 of 2000 this Court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”



10. The sentence is a lawful sentence. In my view, the trial court considered the circumstances of the case and meted out the sentence at its discretion. The sentence imposed was therefore proper in the circumstances.
11. The upshot of the above analysis is that the application for revision of the sentence is found to be lacking in merit and consequently fails.

RULING DATED SIGNED AND DELIVERED THIS 15TH DAY OF MARCH 2023.

J M BWONWONG'A
JUDGE

In the presence of-

Mr. Kinyua court assistant

Applicant in person

Mr. Chebii for the respondent

