



REPUBLIC OF KENYA



**Mbuthia v Republic (Criminal Revision E518 of 2023)
[2023] KEHC 19839 (KLR) (Crim) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E518 OF 2023**

K KIMONDO, J

JULY 12, 2023

BETWEEN

GABRIEL NJOROGE MBUTHIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted by the lower court sitting at Milimani, Nairobi in Criminal Case 1034 of 2015 on two counts of forgery of a land document; and, uttering a false document contrary to sections 350 (1) and 353 of the *Penal Code*.
2. He was imprisoned for 2 years on the first count and 1 year on the second; both sentences to run consecutively.
3. Being aggrieved, he lodged this revision praying, in the main, that the two sentences run consecutively. He avers that he is a father of three; that he underwent a surgical operation recently; that he suffers from high blood pressure; and, other chronic illnesses. The condition has been exacerbated by the difficult living conditions in prison. He thus beseeches the court to consider a non-custodial sentence to enable him benefit from home-based care.
4. I called for the original records of the lower court. Under 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. I am satisfied that the applicant forged the certificate of lease for Nanyuki Municipality Block 8/774 and falsely uttered the same to the complainant as detailed in paragraphs 15 to 18 of the typed judgment of the lower court.



6. I have also studied his mitigation. The lower court considered that he was a first offender, was ailing, remorseful and had young dependents. The court however found the forgery was aimed at defrauding the complainant. Guided by the Judiciary's sentencing Policy Guidelines, the learned trial magistrate found that the sentences above were deserved in this case. I concur entirely in that finding.
7. Accordingly, I am satisfied as to the correctness, legality and propriety of the decision of the learned trial magistrate. The revision also fails by dint of section 364 (5) of the *Criminal Procedure Code* which provides that "when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed".
8. In the upshot, the revision has no merit and is accordingly disallowed. The Deputy Registrar shall notify the applicant of this order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2023.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of: -

Mr. Edwin Ombuna, Court Assistant.

