



REPUBLIC OF KENYA



KENYA LAW
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**Nyakio v Republic (Criminal Appeal E057 of 2022)
[2023] KEHC 22307 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E057 OF 2022**

PM MULWA, J

SEPTEMBER 20, 2023

**IN THE MATTER OF ENFORCEMENT OF ARTICLE
165(3) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE ENFORCEMENT OF THE ORDERS OF THE ORDERS OF
HCCHCRPET/E023/2023 RULING DELIVERED ON THE 26TH
OF JUNE, 2023 AT THE HIGH COURT OF KENYA AT KIAMBU**

AND

**IN THE MATTER OF ENFORCEMENT OF SECTION 333(3) OF THE
CRIMINAL PROCEDURE CODE, CHAPTER 75 LAWS OF KENYA**

AND

**IN THE MATTER OF ENFORCEMENT OF SECTION 46
OF THE PRISONS ACT, CHAPTER 90 LAWS OF KENYA**

AND

**IN THE MATTER OF THE SUCCINCT PRINCIPLES OF NATURAL JUSTICE,
PROPORTIONALITY, REASONABLENESS AND LEGITIMATE EXPECTATION**

AND

IN THE MATTER OF APPLICATION FOR EX-PARTE ORDERS

BETWEEN

MACMILLAN KARANU NYAKIO APPELLANT

AND

REPUBLIC RESPONDENT



RULING

1. The appellant filed the current application seeking to have a refund of the fine paid of Kshs 200,000/= in Kiambu Chief Magistrate's Court Criminal case no 2530 of 2015.
2. At the hearing of the application the Respondent, informed the court it would not put in any response and left it to the court to make its determination.
3. The gist of the application is the appellant was charged in Kiambu Chief Magistrate's Court Criminal case no 2530 of 2015, with the offence of obtaining by false pretence. He was tried and on September 29, 2022 sentenced to three (3) years imprisonment in default of paying Kshs 200,000/= .
4. Dissatisfied by the judgment the appellant filed an appeal being HCCHRPET E023 of 2023 where Lady Justice Chepkwony in her judgment of June 26, 2023, reduced the sentence of three (3) years to twelve (12) months which is to be computed in line with to the provisions of Section 333(2) of the *Criminal Procedure Code* and the prison remission rules. Pursuant to the judgment of Justice Chepkwony, the appellant was released from prison on June 30, 2023 having fully served the sentence period.
5. The appellant now seeks a refund of the fine paid of Kshs 200,000/= having fully served the sentence term. He submits that the payment of the fine amounts to double jeopardy.
6. The offence of obtaining by false pretences as provided for under Section 313 of the *Penal Code*, is a misdemeanour and attracts a sentence of three (3) years imprisonment. There is no provision for a fine. The appellant was sentenced to serve 3 years imprisonment by the trial court. The trial court sentence was set aside by Justice Chepkwony and reduced to 12 months imprisonment. It is not in doubt that the Applicant was released on June 30, 2023 having fully served the sentence.
7. It follows that if the applicant served the sentence term and paid a fine that will amount to double jeopardy and will prejudice him. And it will be in the interest of justice that the applicant be entitled to a refund of the fine paid.
8. However, having perused the lower court records, and indeed all the material placed before me, I have found no proof of receipt by the lower court of any amount of fine paid by the applicant or even a depositor. That then throws into question the basis upon which the applicant's claim for refund is premised.
9. In the circumstances, I find that the application lacks merit and is dismissed. The appellant is at liberty to pursue any other remedies within this appeal.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF SEPTEMBER 2023.

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P.M. MULWA

JUDGE

In the Presence of:

Duale – court assistant



Mr. Muriuki for the state/respondent
Applicant/Appellant (in person) - present

