



**Republic v Wanjala (Criminal Revision E300 of 2024)
[2024] KEHC 12973 (KLR) (22 October 2024) (Revision)**

Neutral citation: [2024] KEHC 12973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E300 OF 2024
SC CHIRCHIR, J
OCTOBER 22, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JACOB WANJALA ACCUSED

REVISION

1. The Applicant herein was charged with the offence of obtaining by false pretences contrary to Section 313 of the *Penal Code*.
2. The particulars of the offence are that on 4th day of April, 2024, at Bumamu village, North Butso Location, in Navakholo Sub-County within Kakamega County, jointly with others not before court, with intent to defraud, obtained from Mutonyi Florence Kshs 6,000/= by falsely pretending that he was in a position to sell his mobile phone make ITEL black in colour, a fact he knew that it is a loan from D-Light company.
3. The Applicant was convicted on his own "guilty" plea, and was sentenced to pay a fine of Kshs 40,000/= or 2 years- imprisonment in default.
4. Through the letter dated 4/9/2024, the Applicant sought for revision of sentence before this court.
5. The Applicant pleads that he is a first offender, and he pleaded guilty at the earliest opportunity. He had hoped this would earn him some forgiveness by the court. He further submits that he is sickly and cannot withstand prison life; that his family is suffering and his child is unable to attend school. He blamed satan and peer pressure, for the offence he committed. He stated that he is remorseful. He prays for an alternative sentence.
6. On behalf of the state, the prosecution submits that the Applicant has failed to demonstrate that the sentence was unconstitutional or was manifestly excessive.



Determination

7. Article 165 (6) and (7) of the Constitution and Sections 362 and 364 of the Criminal Procedure Code bestows with the High Court the Jurisdiction to revise the orders or proceedings of a subordinate court. The scope of this jurisdiction is to ascertain the “correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such subordinate court” (Section. 362 , supra).
8. The Applicant has stated he had expected for forgiveness, having pleaded guilty at the first instance, that he has a family to take care of and his child has stopped going to school. He has also stated that he is a first offender.
9. I have perused the record of the Lower Court and noted that the Applicant opted to say nothing in Mitigation. what he is now telling this court is what he ought to have presented before the trial Court.
10. Nevertheless, I note that the trial court considered the fact that the Applicant is a first offender, and that he had pleaded guilty. The court also noted lack of remorse on the part of the Applicant.
11. Section 313 of the Penal Code, being the section under which the Applicant was charged, provides for a maximum prison sentence of 3 years.
12. The Applicant herein was sentenced to 2 years or a fine of Kshs 40,000/= in default. Whereas I agree with the prosecution that the sentence was lawful, was it appropriate in the circumstances? I think not.
13. The Applicant pleaded guilty at the first instance, he was a first offender and the amount he falsely obtained was Kshs 6,000/=. The fine imposed as an alternative to imprisonment is more than ten times the said amount obtained. Equally, a prison term of 2 years against the maximum of 3 years for a suspect who had pleaded guilty at the first instance, and being a first offender fails the test of propriety.
14. Consequently, for reasons of impropriety, I find it necessary to interfere with the sentence . The same is hereby set aside.
15. It is substituted with a fine of Kshs 10,000 or 6 months- imprisonment in default. The sentence effective date is 21st August 2024 being the date of his conviction in the lower court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF OCTOBER, 2024.

S. CHIRCHIR

JUDGE.

In the Presence of:-

Godwin Luyundi-Court Assistant.

The Applicant.

Ms. Osoro for the State.

