



**Nabutete v Republic (Criminal Revision E144 of 2024)
[2024] KEHC 14527 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E144 OF 2024
RE ABURILI, J
NOVEMBER 20, 2024**

BETWEEN

WILSON MUNYAMA NABUTETE APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Maseno Senior
Principal Magistrate's Court Criminal Case No. E362 of 2024)*

RULING

1. The Applicant Wilson Munyana Nabutete is a convict on two counts of obtaining money by false pretences. This was vide Maseno SPM Criminal Case No. E363 of 2024.
2. He pleaded guilty to both counts and he was convicted and sentenced to serve 12 months' imprisonment on each count, sentences to run consecutively.
3. The value of the money falsely obtained is Kshs.12,000 in Count 1 and Kshs.17,000 in Count 2 respectively.
4. The convict has not appealed. He however has applied vide Notice of Motion dated 14th October 2024 seeking for revision of sentence to that of non-custodial sentence and not consecutive, asserting that consecutive sentence is too harsh and excessive. Further, that he is willing to refund the money obtained from the complainant since the complainant also pleaded that he be refunded the money. That he is suffering in prison.
5. That the presentence report revealed that the Applicant/Convict was very remorseful and that the trial court did not take his mitigations into account.
6. In response, the Respondent through the Principal Prosecution Counsel Mr. Marete submitted that it was unfortunate that the Applicant had not refunded the money to the complainants.



7. He submitted conceding that one (1) year imprisonment on each count, consecutive sentences was excessive for someone who was willing to refund the money. Counsel supported sentence review on condition that the applicant refunds the money that he falsely obtained from the complainant.

Determination

8. I have considered the application for sentence revision and the submissions by both parties.
9. It is not in doubt that the sentence imposed was lawful, whether it was to run consecutively or concurrently since it is in the discretion of the trial court to make that decision, having regard to the circumstances of each case.
10. Following the application, I called for the original Maseno SPM Criminal Case No. E363 of 2024 which has been availed and which I have perused.
11. The applicant defrauded desperate University students who were looking for accommodation near Maseno University.
12. The presentence report filed dated 26th September 2024 showed that the Applicant is accustomed to conning unsuspecting university students of their money pretending that he has hostels to rent out to them and that other similar cases were reported involving him but that he had them resolved locally.
13. That the complainant was interested in the refund of the defrauded money but that the offender is such a slippery person that if he was to be released, he would not refund the money hence the money should be refunded while he is in prison before he is released.
14. That the offender is 29 years old and has a family of children who are school going. However, his family does not want to associate with him because of his character of taking advantage of vulnerable university students looking for accommodation.
15. The applicant convict is considered to be sly and that he cannot honour his promises hence he is not trusted. He was found to be unsuitable for non-custodial sentence.
16. The offender has been in prison since his arrest on 9th September 2024 which is slightly over 2 months. He is said to have shown no remorse and that his family was unwilling to reintegrate him hence the custodial sentence.
17. I have considered all the above. The sentence imposed is lawful and not excessive, considering the negative antecedents of the convict/applicant herein.
18. However, as he is willing to refund the money taken from the complainants, and in the spirit of prison decongestion, I hereby revise the 24 months imprisonment and substitute it with an order that the offender Wilson Munyama Nabutete shall compensate to the complainants Kshs.29,000 and upon such proof of compensation, which proof shall be brought before the Deputy Registrar of this Court to verify with the complainant's identification, he shall be released to serve under Community Service Orders at Maseno Law Courts where he shall clean the lavatories and clear the grass for a period of 9 months from the date of release from prison.
19. Should he fail to compensate the complainants as ordered above, or breach the CSO terms and conditions, he shall be rearrested and send to prison to serve the consecutive 12 months initially imposed by the trial court.
20. I so order.
21. This file is closed.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 20TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

