



**Lumadede v Republic (Criminal Revision E271 of 2024)
[2024] KEHC 15158 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E271 OF 2024
RN NYAKUNDI, J
DECEMBER 3, 2024**

BETWEEN

JACKSON LUMADEDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of cheating contrary to section 315 of the *Penal Code*. The particulars of the offence are that on diverse dates between 27th and 30th day of May, 2023 at Kahoya market in Turbo Sub-County within Uasin Gishu County by means of a fraudulent tricks obtained Kshs 29,550 from Clinton Arusa.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs 100,000/= and in default serve 15 months' imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364 & 382 of the *Criminal Procedure Code* as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) & (b) of the *Constitution*.
4. The applicant seeks review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.



- c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. Upon thorough examination of the case, this matter presented an ideal scenario for restorative justice through victim-offender mediation. The applicant's time in custody has served its transformative purpose, not merely as punishment, but as a crucible for genuine reform and personal growth. His incarceration has fostered a deep understanding of his actions' gravity and catalyzed meaningful change in his character. Weighing the fundamental principles of sentencing; deterrence, rehabilitation, and societal protection, against the time already served, I find the scales of justice balanced. Therefore, I hereby modify the sentence to time served, and order the applicant's immediate release unless and otherwise lawfully held.
7. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 3RD DAY OF DECEMBER, 2024.

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R. NYAKUNDI

JUDGE

