



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL REVISION NO. 129 OF 2020

JAMES KIBONGE NGIGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant has approached this court by way of an application dated the 24th September, 2020 in which he has sought an order for revision of his sentence after he was sentenced to serve 3 years, 6 months and one month respectively without an option of fine.
2. The back ground information is that he was charged with three counts in Siakago Criminal Case No. 270 of 2020 as follows: -
 - a) *Count 1 – obtaining money by false pretences contrary to Section 313 of the Penal Code.*
 - b) *Count II – Giving false information to a person employed in the public service contrary to Section 129(a) of the Penal Code.*
 - c) *Count III – Failing to attend before police officer when required contrary to Section 52(2) as read with Section 129 of the National Police Service Act 2011.*
3. The applicant pleaded guilty in all the counts and he was convicted on his own plea of guilty and sentenced as stated hereinabove and the sentences were ordered to run concurrently.
4. The applicant filed the present petition and at the hearing, he opted to proceed by way of written submissions which he duly filed. In his submissions he stated that he has moved the court relying on Article 159 of the Constitution and Section 76 of the Criminal Procedure Code. That, at the time of the sentence, he had already engaged in an out of court settlement with the complainant with a view to settling the matter and he was willing to pay the complainant back his money which he has since paid in full.
5. It was his contention that the trial court ought to have considered the other dispute resolution mechanisms and by failing to do so, the applicant was denied his right to a fair trial and access to justice. He has urged the court to analyse the correctness of the trial while taking into account the complainant's affidavit filed in support of the application in which he has deposed that the money the applicant owed him has, since been refunded in full.
6. He has urged the court to consider that the sentence that was imposed on him has directly and indirectly affected his whole family especially the children who are currently lacking parental care and which amounts to violation of their constitutional rights under Article 53(1)(e) of the Constitution. He prayed that the sentence be reviewed downwards.
7. In her response, counsel for the respondent stated that since the complainant and the applicant had reached an out of court settlement, she left it to the court to decide.
8. This court has considered the application and the submissions filed in court by the applicant. He has mainly relied on Article 159 of the Constitution and Section 176 of the Criminal Procedure Code.
9. **Section 176** provides as follows: -

In all cases, the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in

degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

10. Whereas I concur with the submissions that the court should promote reconciliation, my understanding of Section 176 is that such reconciliation should take place when the matter is still pending and upon arriving a consensus, the trial court is at liberty to either stay such proceedings or terminate the same.

11. In this case, the applicant pleaded guilty to the three counts and he was sentenced on his own plea of guilty. He has now approached this court by way of revision. The powers of the High Court on revision are only limited to correctness, legality or propriety of any finding of sentence or order/recorded or passed and as to the regularity of any proceedings of a subordinate court.

12. It is my considered view that the applicant has not satisfied this court that there are good grounds upon which the court can revise the sentences meted out by the trial court. The same is legal and there was no impropriety on the part of the learned magistrate.

13. In the circumstances the application is dismissed.

15. It is so ordered.

Delivered, dated and signed at Embu this 11th day of May, 2021.

L. NJUGUNA

JUDGE

.....for the Petitioner

.....for the Respondent