



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.219 OF 2019

DAN OCHIENG OMBEWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Dan Ochieng Ombewa was convicted of four counts related to **forgery, uttering a false document and personation**. The offences related to the theft of Kshs.80 million from the Ministry of Health. In each of the charges that the Applicant was convicted he was sentenced to serve one (1) year imprisonment. The custodial sentences were ordered to run concurrently. In the **theft** charge, he was ordered to serve two (2) years imprisonment. This sentence was further ordered to run concurrently with the above custodial sentences. The sentences were meted out by the trial magistrate on 2<sup>nd</sup> July 2019.

In his application before this court, the Applicant is seeking a revision of sentence. He told the court that he had substantially served the custodial sentence and was only remaining with about four months to complete his sentence. He was suffering from epilepsy and irritable bowel movement. He was therefore susceptible to contracting the COVID 19 disease due to his underlying medical condition. The Applicant pleaded with the court to convert the remainder of the custodial sentence to a non-custodial one. He explained that during the period of his incarceration, he had learnt his lesson. He had been transformed and was ready to return back to society. He urged the court to take into consideration the fact that during the period of his incarceration his family had suffered immensely. Their situation will therefore be ameliorated if the application is favourably considered.

Ms. Chege for the State urged the court to take into consideration that the sentence that was imposed on the Applicant was deterrent. It was also proportionate to the crime. She was not persuaded that the Applicant should be released from prison taking into account the offence that he was convicted of. That being the case, she urged the court to let the Applicant complete his sentence.

This court is being called upon to revise a sentence made by the trial court. When the Applicant was sentenced by the trial magistrate, that court was exercising judicial discretion. The Court of Appeal in Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016 (unreported) held at Page 25 thus:

*“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:*

*“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”*

In the present application, it was clear to this court that the government lost a substantial sum of money as a result of the Applicant’s criminal acts. The Applicant did not make any offer to reimburse the money that was stolen from the government. His plea that he is reformed and therefore ought to be released to serve the remainder of his sentence by serving a non-custodial sentence, is hollow and unconvincing because he has made no offer to compensate the party who suffered as a result of his criminal activities. Although the court empathizes with the Applicant’s medical condition, taking into consideration the entire facts and circumstances of the case, this court formed the view that the custodial sentence imposed on the Applicant was extremely lenient in the circumstances. He should therefore ride his luck and complete the custodial sentence that was imposed on him.

In the premises therefore, the application for revision of sentence lacks merit and is hereby dismissed. This court sees no factual or legal reason to interfere with the exercise of sentencing discretion by the trial court. It is so ordered.

DATED AT NAIROBI THIS 1<sup>ST</sup> DAY OF JULY 2020

L. KIMARU

JUDGE