



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL CASE NO. E024 OF 2020**

**ELIZABETH WAMBUI KAMICHAH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being application against the sentence of Hon. B. M. Ekhubi – PM on Thika CM’s Criminal Case 5143 of 2017)*

**RULING**

1. The Applicant filed a Notice of Motion dated 13<sup>th</sup> October 2020. It was brought under Certificate of Urgency. The Applicant sought leave to file appeal out of time. That has been granted.
2. The other order requested was for bail pending appeal and such further or other relief that the court may deem just and fair to grant in the circumstances.
3. Since Applicant has pursued challenge on sentence, the court has considered same due to the fact it was a short sentence of 3 months passed in September 2020.
4. I considered that the Applicant was found guilty and convicted of the offence of obtaining **By False Pretences** contrary to **section 313** of the **Penal Code**. She was sentenced to 3 months imprisonment without an option of a fine.
5. The offence is a misdemeanor if court was of the view 3 months imprisonment could serve as punishment, nothing stopped it from considering an option of a fine. The Sentencing Policy Guidelines is very clear. Where a person is convicted of a misdemeanor which is a non-serious offence, the court should give such person the option of paying a fine in default of which an imprisonment term is given. The learned trial magistrate in the circumstances overlooked an important principle in sentencing.
6. I have considered that the Applicant has served a substantial part of her sentence.
7. Accordingly, I reduce the imprisonment term to the period already served.
8. Those are the orders of this court.

**DATED, SIGNED AND DELIVERED THROUGH TEAMS THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2020**

**LESIT, J.**

**JUDGE**

**In the presence of**

**Kinyua, CA**

**Mr. Mutuma For the State**

**Applicant in person present**

**LESIT, J**

**JUDGE**