



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.78 OF 2019

MICHAEL GACHUI MARINGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Michael Gachui Maringi was convicted of a raft of charges related to **forgery, personation and stealing**. He was sentenced to pay a total fine of Kshs.900,000/- or in default he was to serve consecutive default sentences of nine (9) years imprisonment. The Applicant has applied before this court for a review of sentence. In support of his application, he relied on a decision of this court in relation to his co-accused Patrick Diru Mutange who was sentenced to serve a consolidated sentence of two (2) years imprisonment. In essence, the Applicant was saying that he ought to be treated in a similar manner with his co-accused when it came to sentence. The Applicant presented to court written submission urging the court to favourably consider his application for sentence review. He further made oral submission urging the court to take into consideration that he was a first offender, was remorseful and had learnt his lesson during the period of his incarceration. He pleaded with the court to exercise mercy and leniency on him and direct that the default custodial sentences imposed on him should and not exceed two (2) years imprisonment. Ms. Akunja for the State was not opposed to the Applicant's application for revision of sentence provided that the Applicant was sentenced to serve more or less the same custodial sentence as his co-accused in the trial court.

This court has considered the Applicant's plea for revision of sentence. When the trial magistrate sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal. 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 indeed the Applicant has a case when he states that he ought to be treated in the same manner as his co-accused when it comes to sentence. He is requesting to be granted parity of sentence with his co-accused. The Applicant was convicted of more than ten (10) counts of offences related to **forgery, personation and theft**. He was sentenced to pay a fine in each of the convicted offences or in default he was to serve various default sentences ranging from six months imprisonment to one year imprisonment. The Applicant is serving the default custodial sentences which mean that he will serve the said default custodial sentences consecutively. Cumulatively, the custodial sentences add up to nine (9) years imprisonment. This court agrees with the Applicant that the default custodial sentences that he is serving are harsh and excessive in the circumstances. This court disagrees with the Applicant when he says that he was convicted of the same charges with his co-accused. The truth of the matter is that he was convicted of more counts than his co-accused.

In the premises therefore, this court will allow the Applicant's application and set aside the default custodial sentences that were imposed on the Applicant. Instead, the Applicant will serve three (3) years imprisonment with effect from 5<sup>th</sup> September 2018 when he was sentenced by the trial court. It is so ordered.

DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2019

L. KIMARU

JUDGE