



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 359 OF 2019**

**AGNES WANJIRU NGUGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant was the accused in Milimani Chief Magistrate's Court Cr. Case No. 578 of 2015 with three counts. In count I, he was accused of forgery contrary to Section 345 as read with Section 349 of the Penal Code. The particulars were that on or about 26<sup>th</sup> April, 2013, at unknown place within the Republic of Kenya, jointly with others not before Court, with intent to defraud forged a certain document namely Kenya National Identification Card Number [...] serial number [...] in the name of Florence Njoki Githira purporting it to be a genuine and valid identity card issued by the Director National Registration Bureau.

2. In Count II, he was charged with uttering a false document contrary to Section 353 of the Penal Code in that on the 26<sup>th</sup> day of April 2013 at Standard Chartered Bank Koinange Branch in Nairobi within Nairobi County, knowingly and fraudulently uttered a certain forged document namely Kenyan national identification card number [...] serial number [...] in the name of Florence Njoki Githira to Juliana Oyando a cashier at the said bank.

3. In count III he was accused of attempted stealing contrary to Section 375 as read with Section 389 of the Penal Code. It was alleged that on the 26<sup>th</sup> day April, 2013 at Standard Chartered Bank Koinange Branch in Nairobi within Nairobi County, attempted to steal Kshs. 1,900,000/= (one million nine hundred thousand shillings) the property of the said bank.

4. After a full trial, the Applicant was found guilty of all the three counts. He was sentenced to pay a fine of Kshs. 100,000/= in each of the counts in default serve one year imprisonment respectively. The sentence was passed on 14<sup>th</sup> June, 2019. On 27<sup>th</sup> September, 2019 he filed the instant application in which he seeks a review of the sentence citing that the penalty was harsh and excessive in the circumstances. In a Notice of Motion dated 27<sup>th</sup> September, 2019, he pleads that he cannot afford the total sum of Kshs. 300,000/= fine and therefore, urges that the sentence be substituted with a non-custodial sentence. In the supporting affidavit sworn by herself, she avers that she has four school going children all of whom depend on her and continues to suffer because of her incarceration. In court, she urged the court to consider that she was 54 years old and had so far been in custody for 104 days. She also pleaded that she had trained in knitting and theology which training would assist her to engage in an income generating activity if the court released her.

5. Learned State Counsel, Mr. Momanyi opposed the appeal stating that the sentence was lenient in the circumstances.

6. In respect of Count I and II, the offences are punishable under Section 349 of the Penal Code which provides for a punishment of three years imprisonment. As for count III, the Applicant was liable to a half the punishment as is provided for the offence of stealing under Section 275 of the Penal Code. That is to say that he was liable up to one and half years imprisonment.

7. I underscore the fact that sentencing is purely in the discretion of the trial court and that a court sitting in exercise of its revisionary jurisdiction cannot interfere with the sentence unless the same is grossly too high or too low or was not based on any material facts or the court failed to take into account the circumstances of the case vis a vis the blameworthiness of the offence.

8. In Count I, the Applicant is said to have forged a National Identity Card purporting it to belong to herself. In count II, she uttered the said forged identity card to a cashier at Standard Chartered Bank in an attempt to steal Kshs. 1,900,000/= that was subject of Count III. In my view, had she succeeded in Count III, she would have fled with a clean Kshs. 1,900,000/=. Be that as it may, she was a first offender which in my view would have mitigated for a lesser default sentence in place of the fine. Nevertheless, the fine of Kshs. 100,000/= in respect of each of the counts was reasonable.

9. In the circumstances, the application partially succeeds with an order that the Applicant will pay a fine of Kshs. 100,000/= in respect of each of the counts in default serve six months imprisonment respectively.

**DATED and DELIVERED this 19<sup>th</sup> day of November, 2019**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *Applicant in person.*

2. *M/s Nyauncho for the Respondent.*