

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.505 OF 2017

KENNETH AJODE OMOLLO *alias*

PATRICK ATIENO ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Kenneth Ajode Omollo *alias* Patrick Otieno Onyango was convicted of several offences of committing fraud and related offences. He was sentenced to serve two (2) years imprisonment without an option of fine. The Applicant was sentenced on 14th August 2017. He is aggrieved by this sentence. He has filed this application for revision of sentence before this court. Mr. Enonda for the Applicant submitted that the trial court did not apply the sentencing principles before sentencing the Applicant to serve the custodial sentence. He explained that the trial court appears to have been influenced, in sentencing the Applicant, by the non-appearance of the Applicant on the date of judgment. Although the Applicant gave an explanation for his absence, the trial court was not persuaded by the reasons that the Applicant placed before the court. Learned counsel submitted that taking into consideration the value of the amount that was said to have been lost as a result of the commission of the offences, the Applicant should have been sentenced to serve a non-custodial sentence in form of a fine or probation. He urged the court to reconsider the sentence of the Applicant and impose an appropriate sentence.

Ms. Sigei for the State opposed the application. She submitted that the Applicant was charged with ten (10) counts, some of which were serious and carried a maximum sentence of three (3) years imprisonment on each count. The sentence passed by the trial court was legal. She was of the view that the sentence was infact lenient. Sentencing being a discretion of the trial court, nothing has been placed before this court to show that the discretion was exercised wrongly. The trial court followed the sentencing policy in directing that the Applicant's custodial sentence runs concurrently instead of consecutively. She urged the court to dismiss the application for revision of sentence.

This court has carefully considered the facts of this case. When the Applicant was sentenced by the trial court, that court was exercising judicial discretion. This court can only interfere with such sentence if it is established that the sentence was either harsh or extremely lenient as to constitute miscarriage of justice. This court can also interfere with the exercise of such sentencing discretion if it is established that the trial court applied the wrong principles of the law in sentencing the Applicant. In the present application, it was clear to this court that the trial court correctly exercised its discretion when it sentenced the Applicant. The trial court took into consideration the nature of the offences that the Applicant was charged with. The value of what was lost by the complainants is one of many such considerations. This court is not persuaded that the Applicant has placed before this court any convincing grounds to enable this court interfere with the custodial sentence imposed by the trial court.

In the premises therefore, the application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2018

L. KIMARU

JUDGE