

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 25 OF 2018

MATUKU KIMANZI BONIFACE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is a Notice of Motion dated 2nd February, 2018 brought under *Sections 362 and 364 of the Criminal Procedure Code*. The applicant seeks a review of the sentence meted out on him in the **Nkubu Criminal Case No. 178 of 2018 Republic vs. Matuku Kimanzi Boniface**.

2. The grounds upon which the Motion is premised on are on its body and the supporting affidavit of Matuku Kimanzi Boniface. The applicant contended that he was charged and sentenced to two years imprisonment after being found guilty of the offence of obtaining money by false pretence contrary to *Section 313 of the Penal code*.

3. That he pleaded guilty to the charge and was remorseful and promises never to indulge himself in any criminal activities. He begs the court to mitigate and substitute his sentence with another form of a lesser punishment or even acquittal. He stated that his wife is pregnant and during the pregnancy, she had developed maternal problems which needs his attention. He is a first time offender and lives a poverty life and his parents are jobless.

4. *Section 362 of the Penal Code* provides: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

5. The jurisdiction of this court on revision is to be exercised within the foregoing parameters. It is to call for the record of the trial court and satisfy itself as to the legality, correctness or propriety of any proceedings taken or sentence meted out.

6. I have perused the record of the trial court. The applicant pleaded guilty of obtaining money by false pretences contrary to *Section 313 of the Penal Code*. Under that section, anyone liable for the offence thereunder is liable to imprisonment for a period of three years.

7. The applicant was sentenced to two years imprisonment. He alleges that, because he is a first offender who lives in poverty, his parents are jobless and that his wife developed maternal problems during pregnancy he should be granted a non-custodial sentence. The applicant obtained a total sum of Kshs. 1,139,655/= from Hakizimana Theoneste by false pretences. That is not a small sum by any standard.

8. In *Republic v Jagani & another [2001] eKLR* Hayanga J, held that:-

“A Court on appeal will only interfere with trial court’s discretion where the sentence was imposed against legal principles, or where relevant factors were not considered or irrelevant and or extraneous matters considered or normally where the sentence is manifestly excessive in view of the circumstances of the case the Court will interfere. It is not enough in the circumstances of any case that the appellants court feels it would have itself given a more improved sentence than the trial court imposed. ... Before this Court reviews sentence imposed by the trial court “this court must be satisfied that there exists to a sufficient extent circumstances entitling it to vary the order of the Court below.”

9. Although the above case concerned an appeal, the principles set out therein are applicable to a revision targeting sentence. Looking at *section 313 of the penal code* and the sentence meted out to the applicant, I am not satisfied that the trial court went against any legal principles when it meted out the said sentence. The sentence was not excessive and I find that the applicant has not provided any material to warrant this court’s interference with the sentence.

10. Accordingly, I find no merit in the application for revision and I disallow the same.

DATED and DELIVERED at Meru this 5th day of July, 2018.

A. MABEYA

JUDGE