

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION No. 820 of 2018.

ROBERT KIPLIMO SANG.....APPLICANT.

VERSUS

REPUBLIC.....RESPONDENT.

RULING.

1. Robert Kiplimo Sang, hereafter the Applicant, brought the present application by way of Notice of Motion seeking to have the sentence imposed upon his conviction in Criminal Case No. 2794 of 2015 reviewed so that the period spent in custody prior to his conviction should be taken into account. The application was supported by an affidavit sworn by himself in which he reiterated his grounds above further clarifying that he had been in remand custody since his arrest on 12th September, 2015 to the date of conviction, 17th July, 2018. He also deponed that he was the father of three children and their sole bread winner.

2. Ms. Akunja for the Respondent did not oppose the application. She however pointed out that the pre-bail report that was lodged in court indicated that the Applicant had failed to divulge the beneficiary of the goods obtained after he committed the offence, consequent which the sentence should not be reduced. In reply, the Applicant admitted that he was the perpetrator of the offence and prayed for leniency as his children were suffering.

3. The Applicant was charged in Makadara Chief Magistrate's Court Criminal Case 2795 of 2015 on 14th September, 2015 with three offences namely, obtaining goods by false pretences, issuing a bad cheque and making a document without authority. He was sentenced in Count 1 to a fine of Kshs. 50,000/- in default serve 12 months imprisonment, in count II a fine of Kshs. 20,000/- in default serve 6 months imprisonment and in Count III to a fine of Kshs. 20,000/- in default 6 months imprisonment. He remained in remand until he was sentenced on 25th July, 2018 which cumulatively was a period of two years, 10 months and 11 days.

4. The Applicant's co-accused was placed on a non-custodial sentence of probation for three years. The varied sentences were informed by the information in the pre-sentencing report that gave an adverse recommendation in the case of the Applicant. Of particular importance is the fact that it pointed to the Applicant's failure to divulge the details of the beneficiary of the goods obtained from Tim Sales. This was clearly an area that was not in the domain of the probation officer. By dint of his conviction, the Applicant was deemed to be a beneficiary of the goods and the probation officer's attempt to extract this information from him was ultra vires his mandate.

5. A consideration of the offences indicates that they each carry a maximum sentences of; Count 1- three years imprisonment, Count II - one year imprisonment and Count III - seven years imprisonment. All the sentences passed were legal and accorded with Section 28 of the Penal Code. It follows that that the Applicant was in the remand custody for over two years which is more than the cumulative sentence imposed.

6. In sum, I hold that he served sufficient sentence. I order that he be forthwith set free unless otherwise lawfully held. It is so ordered.

DATED and DELIVERED this 20th day of November, 2018

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant present in person

2. Miss Atina h/b for Miss Akunja for the Respondent.