

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 73 OF 2016

ANTHONY MUCHINA NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to Section 362 of the Criminal Procedure Code, the Lower Court record in **Kikuyu Chief Magistrates Court, Cr. Case No. 151 of 2013** was forwarded to this court so that the court can satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded on passed, and as to the regularity of any proceedings in the file.

The Applicant was charged with conspiracy to commit a felony contrary to Section 393 of the Penal Code. It was alleged that on 9th February, 2013, at Kidfarmaco Estate in Kikuyu township of Kikuyu district within Kiambu County jointly with others not before court conspired together to commit a felony namely abduction of a child of three (3) years with an intent to demand ransom of Kshs.50,000/= from Alice Wairimu Kungu. He was convicted and sentenced to 2 years imprisonment on 14th May, 2015.

In an application by Chamber Summons filed on 17th February, 2016, he urges the court to revise his sentence and set him free. He submits that the sentence was harsh and excessive in the circumstances, that he is remorseful and was a first offender.

Under Section 393 of the Penal Code, any person who commits an offence of conspiracy to commit a felony upon conviction is liable to an imprisonment for seven (7) years. In the present case, the Applicant was only sentenced to serve two (2) years in jail. In as much as the offence being a felony is serious, a look at the charge sheet attests that the subject matter of the offence was not so much an amount of money that warranted a jail term of two years. In any case, Applicant was a first offender which ought to have mitigated for a lesser sentence. Furthermore, it is clear that for the period of the trial, he was in remand because he could not afford the cash bail granted. The plea was taken on 19th March, 2014 and sentence passed on 14th May, 2015. He was therefore in remand for two (2) years. Since his sentencing, he has cumulatively been in custody for three and a half years which I find as sufficient sentence. The application will therefore succeed.

It is important to note that another revision application **No. 257 of 2015** was filed by the Applicant but nothing transpired to that file. The same is attached to the current application.

In the upshot, I set aside the two years jail term and substitute it with an order that the Applicant has served sufficient sentence and is hereby forthwith set free. It is so ordered.

DATED and DELIVERED this 8th day of November, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person.*
2. *M/s Sigei for the Respondent.*