

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 99 OF 2016

SHEBAN HUSEIN NARE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein was charged with obtaining money by false pretences contrary to Section 313 of the Penal Code vide Milimani Criminal Case No. 1068 of 2014.

It was alleged that on 11th January, 2014, at Aga Khan Hospital in Nairobi within Nairobi Country jointly with others not before the court with intent to defraud obtained from Abdirizakah Hassan Mohamed Kshs. 2,500,000/= by falsely pretending that he was in a position to sell him a diamond, a fact he knew was false. He was sentenced to one year imprisonment after the court noted that he had been in custody for one and a half years. The sentence was passed on 24th December, 2014.

The application herein is brought pursuant to Section 362 of the Criminal Procedure Code in which the court is urged to invoke its revisionary jurisdiction and revise the sentence which the Applicant deems was harsh and excessive in the circumstances. In addition, the Applicant takes issue with the fact that the trial learned magistrate did not properly consider that he had been in remand for almost two years prior to the sentencing. He states that he is aged 65 years, married and suffering from both Asthma and prostate cancer.

I have considered the application. Under Section 313 of the Penal Code, any person convicted for the offence of obtaining money by false pretences is liable to imprisonment for 3 years. The offence is described as a misdemeanor. The record of proceedings shows that the Applicant was a first offender and has spent one and a half years in remand before his conviction. Ultimately after the sentencing, the cumulative period he would be in custody is two and a half years. That, in my view, was a harsh and excessive sentence. In that regard, this court has no alternative but to find that the Applicant has served sufficient sentence.

In the end, this application is allowed. I set aside the one year custodial sentence imposed and substitute it with an order that the Applicant has served sufficient sentence. I order that he be 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 in person.

2.....for the Respondent.