



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 445 OF 2016**

**WILLIAM ARIANDA ANDERE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The trial court file was forwarded to this court pursuant to **Section 362 and 364 of the Criminal Procedure Code** with a request to revise the judgment in **Kibera Criminal Case No. 2375 of 2011** in which the Applicant was the accused. He was charged with five counts as follows:

**Count I:** Making a document without authority contrary to Section 357(a) of the Penal Code.

**Count 2:** Uttering a false document contrary to Section 353 of the Penal Code.

**Counts 3, 4 & 5:** obtaining money by false pretences contrary to Section 313 of the Penal Code.

The learned trial magistrate, Hon. E. Juma, SPM, convicted the Applicant on all the five counts. She however only passed sentence in respect of counts 3 to 5 thereby omitting to pass sentence in counts I and II. The request to this court therefore is to pass sentence in counts I and II.

This court under its supervisory jurisdiction over the courts subordinate to it under **Section 364 of the Criminal Procedure Code** is conferred with powers to correct any irregularity or illegality committed by a subordinate court. It is clear from the face of the judgment that the omission to pass the sentence in counts 1 and II represented not only an irregularity but an illegality as well. I am quick to add that the trial magistrate noted the omission and on her own volition forwarded the trial court file to this court for necessary action.

The particulars of count 1 were that on 3<sup>rd</sup> June, 2011 at unknown place within Ongata Rongai Township in Kajiado County, with others not before court with intent to defraud without lawful authority or excuse made title deed number KJD/OLCHORO-ONYORE/1156 purporting it to be genuine title deed issued by the land registers Kajiado. Particulars of Count II were that on the 3<sup>rd</sup> day of June, 2011 at Ongata Rongai Township in Kajiado County, knowingly and fraudulently uttered a forged Title Deed No. LR NO. KJD/OLCHORO-ONYORE/1156 to Martha Karwirwa Anthony.

Under the Penal Code, with respect to Count 1, the Applicant is liable to imprisonment for 7 years whereas in Count 2, he is liable to imprisonment for 3 years. The learned magistrate having preferred fines in Counts 3 to 5 is only fair that this court imposes a similar sentence. Accordingly, in count I, the Applicant shall pay a fine of Kshs. 200,000/= in default, serve 1 year imprisonment. In count II, he shall pay a fine of Kshs. 50,000/= in default, serve six months imprisonment. All the sentences shall consecutively. It is so ordered.

**DATED and DELIVERED this 6<sup>th</sup> day of November, 2016**

**G.W. NGENYE-MACHARIA**

**JUDGE**