



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL REVIEW 13 OF 2013

JOHN NKONGE MOSES APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The applicant has approached this court with a letter dated 6th February, 2013 seeking revision of his sentence under Section 362 and 364 of the Criminal Procedure Code. He has set out the grounds for his application as the following 11 grounds:-

1. That I am the applicant herein charged with obtaining of money by false pretence Contrary to Section 313 of the Penal Code and sentence to serve two (2) years imprisonment term.
2. That the sentence given by the lower court is harsh in the circumstances.
3. That prior to my conviction and sentence I was a student at University of Nairobi doing Higher Diploma in Human Resource Management.
4. That the trial magistrate convicted me without an option of fine when considerable fine to suit an ordinary Kenyan could have met the end of justice.
5. That the honorable court should have considered sentencing me to non- custodial sentence in view of that I was a student in the university and single parent following the death of my wife and being the father of two young girls aged 6 years and 4 years respectively and also the bread winner of the family.
6. That I am a young family man whose life may be put at jeopardy as a result of prolonged stay in prison especially to my kids and young brothers and sisters who depends on me.
7. That court should consider sentencing I the appellant to a non custodial sentence in view of my mitigation.
8. That I humbly plea for leniency.
9. That the honourable High Court give any orders as the interest of justice will demand.

10. That I am earnestly remorseful and repentant and much promising to turn on a new course or rehabilitation.

11. That I pray this mitigation be allowed, quash the conviction and set aside the sentence imposed.

The court, in exercise of its powers under Section 365 of Criminal Procedure Code and invited the applicant to make an address, in his submissions in court he urged that at the time of his sentencing in October, 2012, he was a student at Nairobi University where he was doing Higher Diploma in Human Resource Management. He had no documents to establish same. He said he had 2 children with his aged mother in law as his wife had died. He stated that he does not deny that he took money from the complainants'. He however stated that he was in no position to repay the money.

Mr. Mungai for state opposed the application for reason. The learned state counsel urged that the court was very lenient because it sentenced the applicant to 2 years and that consequently he would only serve 18 months imprisonment. Mr. Mungai urged that the maximum sentence for obtaining by false imprisonment Contrary Section 313 of the Penal Code, which the accused faced was 3 years imprisonment.

The applicant has brought this application under Section 362 and Section 364 of the Penal Code. These Sections of the law Provides:-

“362. Any person who signs or transmits to a person authorized by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of a felony and is liable to imprisonment for seven years.

364. In this Chapter -

“coin” includes any coin which is legal tender in Kenya by virtue of the Central Bank of Kenya Act, and any coin of a foreign Sovereign or State;

“counterfeit coin” means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination.”

The applicant was charged with eight counts of obtaining money by false pretences contrary to Section 313 of the Penal Code. The amounts involved is Kshs.320,000/- .The prosecution proved that the applicant obtained the various amounts of money, between Kshs.30,000/- and Kshs.50,000/- from various people through false pretences that he would get the complainants employment with the Teachers Service Commission.

In order to have court exercise its discretion under Section 362 and Section 364 of the Criminal Procedure Code, there must be impropriety, incorrectness, mistake or illegality either in the proceedings or the judgment or order of the lower court.

The proceedings are before me.I see no impropriety, incorrectness, error or mistake of any kind either in the proceedings or in particular the sentence. The Applicant was sentenced to 2 years imprisonment on each count. The maximum sentence for the offence is 3 years imprisonment.The sentence was therefore legal. The applicant has urged court to quash the sentence or set it aside. The grounds relied upon have no bearing to Sections 362 or 364 of the Criminal Procedure Code. The Applicant should file an appeal if he wishes to challenge the conviction entered against him. On the other hand, if he wishes to challenge the sentence for any other reason other than illegibility, in correctness or impropriety, he should file an appeal.The application has no merit whatsoever and is accordingly dismissed.

Dated signed and delivered this 4th day of July 2014

J. LESIIT

JUDGE