

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION NO. E311 OF 2025

EZEKIEL KIPSANG TALAM
APPLICANT

=VERSUS=

REPUBLIC
RESPONDENT

Coram: Hon. Justice R. Nyakundi

MS Sidi for State

RULING

1. The Applicant was charged with obtaining money by false pretenses contrary to Section 313 of the Penal Code. The facts are that on the 18th day of November 2023 at Kipsangul area in Soy Sub County within Uasin Gishu County jointly with others not before Court with intent to defraud unlawfully obtained from Martin Baariu Mberia cash Ksh 490,000/= by falsely pretending that you were in a position to sell 200 bags of maize a fact you knew to be false.
2. Count II: Conspiracy to defraud contrary to Section 317 of the Penal Code. The particulars being that on the 18th day of November 2024 at Kipsangui area in Soy sub-County within Uasin Gishu County jointly with others not before Court conspired with intent to defraud Martin Baariu Mberia Ksh 490,000/= by falsely pretending that they were in a position to sell 200 bags of maize a fact you knew to be false.
3. The Applicant was found guilty was sentenced to serve 18 months' imprisonment in both counts on 13th March 2025.

4. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
5. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

INTRODUCTION AND SOURCES OF INFORMATION

This is a sentence review report concerning Ezekiel Kipsang Talam who was sentenced to one year in prison for the offence of obtaining money by false pretense contrary to section 313 of the penal code. The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison, his family members, and the local area administration. Additionally, the lower court file was reviewed.

A. CURENT HOME AND PERSONAL CIRCUSTANCES

The inmate is the third-born in a family of fourteen children but two are deceased, born to Musa Talam who is deceased and Prisila Talam who is elderly. Born in the year 1958, the inmate was enrolled at Aidai Primary school and later joined Kaptagat Secondary school where he dropped out in form two. He later trained in mechanics and driving. His siblings include Lena Chepkoech, Philemon Talam, Job Talam, Esther Bii, Asbel Talam, Naomi Talam, Milka Cheotoo, Elisha Talam, Selly Talam, Eunice Chelagat and Jerono Talam. The inmate is married to Christine Jepkosgei and Jesca Ezekiel with nine children born of the two wives. They are; Peris Cherop, Nobert Kipruto, Arthu Kipchirchir, Bii Kipkoech, Allan Kipkemei, Bramwel Kiplagat, Tonny Kibiwott, Lyvine Chelel and Alvine Kipiel He was engaging in farming to earn a living prior to his arrest The inmate was diagnosed with high blood pressure. He does not abuse drugs and alcohol but has a history of alcoholism in his youthful age. The family have expressed their willingness to support the inmate

and have requested that he be considered for a non-custodial sentence.

B. PRISON REHABILITATION

■ While in custody, the inmate has been actively involved in the prison activities, working as a cleaner in the kitchen. This role has played a significant part in instilling discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

■ **C. OFFENDERS' ATTITUDE AND IMPACT OF IMPRISONMENT**

The inmate has expressed regret for his actions. He recognizes that being imprisoned has had a significant impact on him and that he has learned the importance of respecting other people property.

D. CONCLUSION

Your Lordship, in light of the inmate's relatively old age, the progress made toward serving his custodial sentence, and his clear expression of remorse, there is a strong indication of his potential for rehabilitation. Furthermore, the presence of a supportive home environment provides a conducive foundation for successful reintegration through community-based correctional measures.

E. RECOMMENDATION

The inmate may be considered to serve Community Service Order (CSO) for the remaining period of 3 months, to be served at Sambut Dispensary.

DECISION

5. The principles of sentencing and all its aims are well articulated in the Sentencing Policy Guidelines of the Judiciary 2023. The application of it must be construed within the constitutional imperatives under the Bill of

Rights commonly referred to as Chapter 4 of the Constitution. One of the key pillars in sentencing is the provisions under Article 25 which states *inter alia* that the rights and fundamental freedom from torture and cruel, inhuman or degrading treatment or punishment should underpin exercise of discretion of a Judicial Officer when contemplating imposition of a sentence against a particular offender who has been found guilty of a specific crime.

6. The contemporary criminal justice in Kenya is driven mainly by the retributive or deterrent objective. There is less emphasis on restorative justice or rehabilitation. Models of justice are commonly divided into three main categories: retributive, deterrent and restorative. Retributive justice focuses on the moral dimension of justice. It emphasized the notion that perpetrators of a crime or those who fail to abide by laws of customary norms “deserve” to be punished for their wrongdoing. On the other hand, a deterrent view of justice focuses on the instrumental dimension of justice. It emphasizes that punishment for wrongdoing is necessary to prevent further violations of the law and to signal the boundaries of socially acceptable behavior. Finally, the restorative view of justice focuses on the need to rebuilt or restore relationships and/or socio-economic status. The form of justice includes scope for compensation as a way of correcting wrongdoing and achieving justice.
7. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the **Fatuma Hassan Salo v Republic [2006] eKLR** Makhandia J as he then was remarked; *Thus, the court should be guided by evidence and sound legal principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors.* In addition, the Court in **Peter M. Kariuki v Attorney General, [2016] eKLR** also made the following observations; *That a Court has been granted discretion in a manner that is both judicial and reasonable - not upon caprice or personal opinion.*

This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.

8. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences.

*(a) **Sentencing options** – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.*

*(b) **Custodial v non-custodial** – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.*

(c) The third step is twofold, the choice that is to be considered depends on which option was made in step 3.

*(i) For a **non-custodial sentence**, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration*

*(ii) For **imprisonment**, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.*

- 1 A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.

- 2 The Applicant/convict in this matter committed a serious offence of obtaining a colossal amount of money quantified at Ksh 490,000/=

from Martin Mberia. The trial Court in its wisdom and knowledge convicted the Applicant to serve 18 months imprisonment with effect from the 24th February 2025. During the review proceedings it emerged that he has served the better period of the 18 months custodial sentence. Apparently remaining with a balance of three months. In my obiter view justice for this case shall be served if the complainant was to be reimbursed or compensated the money he was defrauded. In reviewing this sentence, I hope that the Applicant/convict shall reconsider the financial ruin he occasioned the complainant and find ways and means while serving non-custodial sentence to settle the claim. I therefore make an order of the Applicant/convict to be released from Prison to undertake public works for three months at Sambuti Dispensary. It so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1ST DAY OF
DECEMBER 2025**

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**R. NYAKUNDI
JUDGE**