



REPUBLIC OF KENYA



Ngeno v Republic (Petition 5A of 2022) [2024] KEHC 1882 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
PETITION 5A OF 2022
GMA DULU, J
FEBRUARY 28, 2024**

BETWEEN

SAMWEL KIBET NGENO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Though this matter is designated as a Constitutional Petition, it is actually a mere application for review of sentence.
2. It is an undated request for review of the sentence pronounced by the Magistrate on 28th September 2021, and is based on the following grounds:-
 1. That the applicant pleaded not guilty to the charges.
 2. That the applicant pleads with the court to allow his petition fully.
 3. That the applicant requests the sentence to run from the time he was arrested.
3. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant as well as the submissions filed by the Director of Public Prosecutions.
4. Having considered the issues raised in the application and the requests of the applicant, in my view this application lacks merit and is for dismissal, as there is no basis for this court exercising its revision powers under Section 362 of the *Criminal Procedure Code* (Cap.75).
5. The first reason is that the allegation by the applicant that he was held in custody for a duration of 1 year and 9 months is not true, which means that the applicant is bent on misleading the court. It is clear from the documents filed that he was in custody for only a short period and then released on bail, and the case delayed merely because of him failing to attend court. Thus he did not fall within the



parameter of Section 333 (2) of the Criminal Procedure Code (Cap.75), that required the trial court to take into account the period he was in custody during sentencing.

6. The second reason why the application will not succeed, is that the sentence herein was substantively considered and determined in Makueni High Court Criminal Appeal No E100 of 2021 in a judgment delivered on 22nd September 2022.
7. I note also that the applicant was given an option of a fine while the statutory sentence was imprisonment. In my view therefore, the trial court was infact very lenient to him and the applicant should in those circumstances have counted himself lucky for being granted the option of a fine for an offence of obtaining money by false pretences under Section 313 of the Penal Code.
8. I thus find no merits in the application for review of sentence herein. I dismiss the application.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF FEBRUARY 2024 VIRTUALLY AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Applicant

Mr. Kazungu for State

