



REPUBLIC OF KENYA



**Kinyua v Republic (Criminal Revision E224 of 2023)
[2024] KEHC 3900 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3900 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E224 OF 2023
GL NZIOKA, J
APRIL 22, 2024**

BETWEEN

PETER MACHARIA KINYUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned on 26th April, 2023 before the Chief Magistrate’s court charged vide Chief Magistrate’s Criminal Case No. E460 of 2023 with the offence of; obtaining money by false pretence contrary to section 313 of the *Penal Code* (herein “*the Code*”).
2. The particulars of the charge are that, on the 1st day of February 2018 in Kiambogo Area within Nakuru County with intend to defraud, the appellant obtained cash Kshs. 900,000 from Eliud Ondati Bosire by falsely pretending that you were in a position to sell hi a piece of land namely Kiambogo/Kaimbogo Block 3/57 (Kiunguria) measuring two (2) acres located at Kiambogo Area a fact the applicant knew to be false.
3. He pleaded not guilty to the charge. However, on 24th May, 2023 he change his plea to guilty and the facts were read to him and he confirmed the same to be correct and was convicted on his own plea of guilty. The trial court ordered for a pre-sentence report and the Probation Department filed a report dated 13th June, 2023.
4. Consequently, on 2nd August, 2023 he was sentenced to pay a fine of Kshs. 300,000 and in default to serve a term of three (3) years imprisonment.
5. By an undated notice of motion, the applicant prays for orders:-
 - a. Spent



- b. That, the honourable court be pleased to revise the sentence downwards as provided with section 28(2) of the Penal Code or grant a non-custodial sentence.
 - c. That, the honourable court be pleased to consider that the applicant is a first offender and remorseful for the offence he committed.
 - d. That, the applicant be exempted from paying costs as he is a pauper.
6. The application is supported by the grounds therein and his supporting affidavit in which he states that, he was charged with the offence of obtaining money by false pretence contrary to section 313 of the Code. He pleaded guilty and was convicted and sentenced to pay a fine of Kshs. 300,000 and in default to serve a term of three (3) years imprisonment. That he is the sole bread winner of his family and he has learnt to be a law abiding citizen. Further he has no pending matter before the court
7. However, the respondent filed grounds of opposition dated; 15th April, 2024 which states that: -
- a. That the applicant herein was convicted and sentenced to serve a custodial sentence of 3 years imprisonment for the offence of obtaining by false pretense contrary to section 313 of the Penal Code.
 - b. That the applicant was given an option of a fine of Kshs 300,000.
 - c. That where a convict is afforded an option of a fine the court can only be invited to look at the illegality of the sentence.
 - d. That the sentence of three (3) years is provided for under the law by dint of section 313 of the Penal Code and as such the sentence meted is lawful
 - e. That the applicant was sentenced on 2nd August 2023, this clearly shows that the applicant has not served a substantial part of the sentence to warrant the intervention of this Honourable court by way of Revision
 - f. That the applicant had a right of appeal which he opted not to pursue
8. The court further ordered for a pre-sentence report which was dated and filed on 17th April, 2024, and which the court has considered
9. The pre-sentence report dated 14th June, 2023, is negative. There was no one who recommended release on a non-custodial sentence.
10. Surprisingly, the pre-sentence report dated 17th April, 2024 recommends a probation order yet it does not include the views of the victim and/or compensation for the victim. A report that lacks the victim's view is biased and not objective. I reject it and the In-Charge Probation Department needs to bring the court sentiments to the officer who wrote this report. That said, the offence the applicant committed is serious. He has not even served a year of his sentence. The victim who lost Kshs. 900,000 has not been compensated therefore this is not a suitable matter for review of sentence. The application is rejected.
11. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 22ND DAY OF APRIL 2024

GRACE L. NZIOKA

JUDGE

In the presence of:-



The applicant present virtually
Mr. Abwajo for the respondent
Ms Ogutu: Court Assistant

