

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NUMBER 246 OF 2019

AHMED ABDUL MAJID.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant, **Ahmed Abdul Majid** was charged with the offence of stealing by servant contrary to **Section 268 (1)** as read with **Section 281** of the **Penal Code**. He was convicted on his own plea of guilty and sentenced to serve two (2) years imprisonment on 1st March 2019.

2. By a Chamber Summons Application filed on 20th September, 2019, he seeks a reduction of the sentence passed against him. The application is supported by a self-sworn affidavit and the grounds for the same are contained in a document titled 'Memorandum of Revision'. He states that he is a patient of haemorrhoids which reoccurred and exacerbated while in prison. He also states that he is a family man and the sole bread winner with six young children and his wife is a kidney patient who needs dialysis every three months. Further, he states that he is a first offender and prays for a community service order in place of the custodial sentence. He further states that he is fully rehabilitated and is remorseful to the honourable court and the society. Finally, he urges the court to invoke the provisions of **Section 333(2)** of the **Criminal Procedure Code** to direct that the period he spent in remand be computed as part of his sentence.

3. During the hearing of the Application, the Applicant reiterated the foregoing grounds. He further asked the court to deduct the period of three months spent in remand custody prior to his conviction from his sentence which he only has two months to complete. He also reiterated that he is remorseful and prayed for forgiveness. The learned State Counsel, Ms. Nyauncho did not oppose the application. She however noted that the Applicant is set to complete his sentence in July, 2020.

4. **Section 362** of the **Criminal Procedure Code** provides as follows regarding this courts revisionary powers:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

5. The Applicant was accused of stealing 11,758 litres of diesel valued at Kshs. 1,293,380/= on the 2nd day of November, 2018 from his employer Lochab Transport Limited. As mentioned earlier, he pleaded guilty to the offence. **Section 281** of the **Penal Code** prescribes a maximum sentence of seven years imprisonment for this offence. Hence, note that the trial court correctly exercised its discretion in imposing a two years custodial sentence on the Applicant after considering his probation report as well as the victim's statement that the company lost a lot of money as a result of the criminal act of the Applicant who had been employed as a fuel attendant.

6. However, it is evident that the trial court did not take into account the period that the Applicant had spent in remand custody from 29th November, 2018 when he was arrested to 1st March, 2019 when the sentence was passed. **Section 333(2)** of the **Criminal Procedure Code** requires that the period which an accused person spent in remand custody be taken into account prior to sentencing. This court takes into account the aforesaid period of three months which is hereby deducted from the two years term. This therefore means that the Applicant has cumulatively served a period of seventeen months and three days which is almost two thirds of his sentence and may entitle him to benefit from remission.

7. Consequently, this application is hereby allowed. The Applicant's custodial sentence is commuted to the period served. I order that the Applicant be and is hereby set at liberty forthwith unless otherwise lawfully held. It is so ordered.

Dated and delivered at Nairobi This 5th May, 2020

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.

2. *M/s Akunja for the Respondent.*