



Nauna v Director of Public Prosecutions (Miscellaneous Criminal Application E047 of 2022) [2023] KEHC 3823 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E047 OF 2022**

WM MUSYOKA, J

APRIL 28, 2023

BETWEEN

MORGAN NAUNA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. The applicant was convicted, in Kakamega CMCCRC No. 2123 of 2016, by Malesi SRM, on 2nd March 2017, of office breaking and stealing, and was sentenced to 4 years imprisonment for the breaking in and 7 years imprisonment for the stealing, with the 2 sentences running consecutively. He appealed, in Kakamega HCCRA No. 139 of 2017, against both conviction and sentence, and his appeal was dismissed, on 9th October 2019, by Sitati J, for lacking merit.
2. In the instant proceedings, by a Motion, undated, but filed herein on 15th June 2022, he complains that he was given 2 separate sentences in 1 count instead of being given only 1 sentence; and that the 2 sentences, if at all lawful, should have been made to run concurrently rather than consecutively.
3. The applicant lodged herein written submissions, filed herein on 15th November 2022, where he largely argues in mitigation of sentence, rather than in support of what he urges in his Motion.
4. The respondent, through Ms. Challah, made oral arguments on 6th December 2022. She submitted that the issue of sentence was argued on appeal and dismissed, and there was no occasion for the High Court to revisit the matter, and that the appellant was better off before the Court of Appeal.
5. The appeal file has not been placed before me, and I cannot, therefore, tell whether or not the applicant argued those points before the appellate court.



6. I agree with Ms. Challah, these are issues that should have been dealt with on appeal. The appeal was disposed of. The High Court is now functus officio, so far as the matter of sentence is concerned. My hands are tied. The Motion is accordingly dismissed.

RULING DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 28TH DAY OF APRIL

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Morgan Sauna, the applicant, in person.

Ms. Challah, instructed by the Director of Public Prosecutions, for the respondent

