



**Tuei v Republic (Miscellaneous Criminal Application
E024 of 2023) [2023] KEHC 19707 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2023**

TA ODERA, J

JUNE 27, 2023

BETWEEN

ISAIAH KIPKORIR TUEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Isaya Kipkorir Tuei was charged with offences of obtaining money by false pretences contrary to section 313 of the *Penal Code*, in Molo Chief Magistrate's court CR 1013 OF 2020, CR 1012 OF 2020. The applicant pleaded guilty in both files and he was convicted in the said respective files and he was sentenced to 3 years imprisonment by Hon R. Yator (PM) on 25.5.20 and 3.11.20.
2. He thereafter application dated 16.2.23 is brought by the applicant who is seeking that an order be made for the sentences to run concurrently and reduction of sentences imposed.
3. The prosecutor conceded to the application.
4. The particulars of the charge in CR 1013 /20 is that the appellant obtained Kshs.993,000/= from Patrick Kiragu Gachoki by falsely pretending that he was in a position to sell him Eucalyptus trees on 2.0 ha of land Parcel Nakuru/Boron settlement scheme/285 a fact he knew to be false. In CR 1012 OF 2020, he obtained Justus Kipruto Koech Kshs.233,200/= by falsely pretending that he could sell him 2000 matured Cypress by false pretense.
5. Revisionary jurisdiction of this court is found in section 362 of the *Criminal Procedure Code* which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose 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.”

6. Section 12 of the CPC, allows the court to combine lawful sentences. The judiciary sentencing policy guidelines provides as follows:

“7. 7.13 Where the offences emanate from a single transaction, the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentence should run consecutively.

7. 14 The discretion to impose concurrent or consecutive sentences lies in the court.”

7. I have seen the case of Humphrey Wanyama v Republic [2019] eKLR where it was held that, “In the instant case the offences were committed on totally different dates and places and in my view they do not fit into the above definition of “same transaction” and the sentences thereof cannot properly be ordered to run concurrently. As for the combination of sentences provided in section 12 of the Criminal Procedure Code my view is that it refers to combining one of sentence say imprisonment with another of say a fine and does not in any way refer to combination of sentences in two different cases where the same were not committed in the same transaction.”

8. It has emerged that applicant defrauded two complainants the complaint in Cr 1013 of 2020 was defrauded between 23.4.20 and 14.5.20 while complainant in Cr 1012/20 was defrauded between 9th August 2019 and August 16, 2019 . The offences were thus committed about 9 months apart and thus could not have been in the same transaction. .

9. On whether the sentences were harsh,

Section 313 of the Penal Code provides as follows:

Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanor and is liable to imprisonment for three years.”

10. In Cr 1013 of 2020, the prosecution informed the court that the applicant was a serial obtainer having been convicted in CR 1012 and this not denied. In the case of Shadrack Kipkoech Kogo v R., Eldoret Criminal Appeal No.253 of 2003, the Court of Appeal stated thus:-

“...sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka v R. (1989 KLR 306)”

11. Though prosecution conceded to the application, this court still has a duty to re-analyze the evidence and record and arrive at its own conclusion.

12. I have re-evaluated the entire evidence on record. It is trite law that the court must consider the mitigation nature and circumstances of the offence before sentencing. I have considered the value of the subject matter in Cr 1013/20 which was Kshs.993,000 and Cr 1012/20 the value was Kshs.233,200/= The appellant pleaded guilty to the



offences and save the time of the court and for that reason these learned trial magistrate ought to have given him a concession, I proceed to review the sentence to two years imprisonment on each file. The sentences will run consecutively.

13. I thus partially allow the application to that extent.

T.A. ODERA - JUDGE

27.6.2023

JUDGMENT DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;

Applicant present in person

Ms Mburu for State

Court Assistant: BOR

T.A. ODERA - JUDGE

27.6.2023

