



**Marete v Republic (Criminal Revision E546 of 2023)
[2023] KEHC 21577 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL REVISION E546 OF 2023
DR KAVEDZA, J
JULY 31, 2023**

BETWEEN

JOSHUA KIOGORA MARETE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the sentence delivered by Hon. Gilbert Shikwe, PM on 17th November 2022 in Milimani Chief Magistrate's Court criminal case no. 1232 of 2019 Republic vs Joshua Kiogora Marete)

RULING

1. The applicant has applied for revision of sentence following his conviction and sentence in Criminal Case No 1232 of 2019. In count 1, he was charged with stealing by agent contrary to section 283 of the Penal Code. He was charged, in count 2, with the offence of obtaining money by false pretence contrary to section 313 of the Penal Code. He pleaded not guilty to the charges and following a full hearing, he was convicted and sentenced to one-year imprisonment for each count. The sentences were to run consecutively.
2. Being dissatisfied with the said decision, he lodged an appeal to the High Court Criminal Appeal No. E229 of 2022. However, on July 17, 2023 the applicant appeared in court and applied to withdraw his appeal and in the alternative filed an application for revision of sentence only.
3. This ruling is made in exercise of the supervisory jurisdiction of the High Court in criminal cases provided in sections 362 to 366 of the Criminal Procedure Code. Section 362 provides that:
 362. 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.

4. Furthermore, the Court of Appeal, in *Bernard Kimani Gacheru v Republic* [2002] e-KLR stated that:

“It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

5. In my view, the trial court considered the circumstances of the case and meted out the sentence at its discretion. The sentence imposed was therefore proper in the circumstances. On whether they should run consecutively, section 14 of the *Criminal Procedure Code* (cap 75) Laws of Kenya provides as follows:

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

6. It is therefore lawful to pass consecutive sentences in the circumstances prescribed by section 14. In *Peter Mbugua Kabui v Republic* [2016] eKLR the Court of Appeal stated as follows:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.

7. I have also considered the Sentencing Policy Guidelines which contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide as follows:

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.

8. I have perused the record of the trial court. The applicant was charged with two counts. The offences were committed in the same transaction, but against different complainants. I am satisfied that, in the circumstances, the trial court erred in imposing a consecutive sentence. Accordingly, I hereby set aside the consecutive sentence and substitute the same with an order that the sentences shall run concurrently.

RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2023.

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Chege for the State

Applicant present virtually.

Joy C/A

