



**Mundia v Republic (Criminal Revision E044 of 2023)  
[2023] KEHC 21260 (KLR) (Crim) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21260 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E044 OF 2023  
DR KAVEDZA, J  
JULY 28, 2023**

**BETWEEN**

**PATRICK MWANGI MUNDIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged, and convicted for the offence of obtaining money by false pretenses contrary section 313 of the *Penal Code*, count II, making a false document contrary to section 347 (b) as read 349 of the Penal Code and in count III, uttering a false document contrary section 353 of the Penal Code. He was sentenced to serve one (1) on each count to run consecutively. Being dissatisfied, he filed an appeal challenging his conviction and sentence. However, he abandoned his appeal and applied for the revision of his sentence. He prayed that his sentence run concurrently.

**Analysis and determination.**

2. The application is founded on the grounds that the trial court directed his sentence to run consecutively and not concurrently. He now seeks that the sentence be ordered to run concurrently. The Court of Appeal, in *Bernard Kimani Gacheru vs 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 stated is shown to exist.'

3. 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.

4. It is therefore lawful to pass consecutive sentences in the circumstances prescribed by section 14. In [Peter Mbugua Kabui vs 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.'

5. 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 discretion of the court.

6. In this case, the trial court was satisfied that the applicant committed a series of offences which were committed on diverse dates. Therefore, it did not err in ordering a consecutive term for the counts charged. The upshot of the above analysis is that the application for revision of the sentence consequently fails.

It is so ordered.

**Ruling dated and delivered virtually this 28<sup>th</sup> 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

