



**Abdi v Republic (Criminal Revision E580 of 2023)
[2023] KEHC 22654 (KLR) (Crim) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E580 OF 2023
DR KAVEDZA, J
SEPTEMBER 28, 2023**

BETWEEN

ABDIRAHAMAN MOHAMMED ABDI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the sentence delivered on 28th July 2023 by Hon C. Njagi P.M at JKIA Chief Magistrate’s Court Criminal Case No. E062 of 2023 Republic vs Abdirahaman Mohammed Abdi))

RULING

1. The applicant was charged for the offences of count I, using a forged passport contrary to section 54 (1) as read with section 54 (2) of the [Kenya Citizenship and Immigration Act](#), 2011; count II, presenting a false document contrary to section 51 (4) (g) as read with 54 (2) of the [Kenya Citizenship and Immigration Act](#); count III, misleading an immigration officer contrary to section 53 (1) (a) as read with section 53 (2) of the Act and in count IV, being unlawfully present in Kenya contrary to section 53 (1) (j) as read with 53 (2) of the [Kenya Citizenship and Immigration Act](#). He was convicted and on his own guilty plea. In counts I and II, he was sentenced to pay a fine of Kshs 1 million and in default serve 1 year imprisonment on each count. In counts III and IV, he was sentenced to pay a fine of Kshs 50,000 and in default to serve six (6) months imprisonment on each count. The default sentences were to run consecutively. The trial court also directed that the applicant be repatriated to his country of origin upon the conclusion of his sentence.
2. Vide a notice of motion dated August 11, 2023, the seeks revision of his sentence. The application is supported by an affidavit sworn by the applicant of a similar date. It is premised on the grounds that he is a Somali national living with his mother and 4 younger siblings in Mogadishu. His father was killed



by Al-Shabab Rebels and he is the sole breadwinner in the family. The fine imposed by the trial court is too high and he is unable to afford it to return to his family. His family is willing to cater for the repatriation costs. He is remorseful and prays for leniency. He urges the court to grant a concurrent sentence. He also prays that the court reduces the fine imposed.

Analysis and determination.

3. Revisionary jurisdiction of the High stems from the broader supervisory jurisdiction of the High Court conferred under article 165(6) of the [Constitution](#), thus:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
4. And, under article 165(7) of the [Constitution](#): -
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
5. Notably, the appellant was convicted on his own plea of guilt. He has not challenged the plea as being unequivocal. Thus, he is only entitled to appeal on or seek revision of the extent or legality of sentence. See Section 348 of the [Criminal Procedure Code](#) below: -
 348. No appeal on plea of guilty, nor in petty cases
No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.
6. On the merits of the application, the applicant seeks a revision of the sentence of the trial court. The argument raised is that the sentence imposed is too harsh and the court should have granted a concurrent default sentence. In addition, he is remorseful and seeks to be repatriated back to his family in Mogadishu. The question now arising herein is, does the sentences passed by the trial court warrant a review?
7. The applicant was convicted under section 54 (2) of the [Citizenship and Immigration Act](#) in counts I and II. It prescribes a fine of not more than Kshs 5 million or an imprisonment term not exceeding 5 years or both. The trial court sentenced the applicant to pay a fine of Kshs 1 million in default 12 months imprisonment on each count. In count III and IV, the act prescribes a fine of not more than Kshs 500,000 or to imprisonment to a term not exceeding 3 years or both. The trial court sentenced the applicant to a pay a fine of Kshs 50,000 in default serve 6 months imprisonment on each count. From the record, the applicant herein was not sentenced to the maximum sentence.
8. The applicant also prayed that the sentences run concurrently. 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.



9. 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.

10. 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.

11. The discretion to impose concurrent or consecutive sentences lies on the court. However, in the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a sentence in another count. The trial Magistrate could not and this court cannot order for default sentences in the four counts to run concurrently.

12. I have however taken notice that the applicant pleaded guilty and saved the court's time. The prosecutor did not have to avail evidence and neither did the magistrate have to write a judgement. He was therefore entitled to a more lenient sentence. This would encourage offenders facing similar charges to plead guilty or plea bargain with the state for lesser sentences. The fact that the trial magistrate ordered repatriation in itself is a deterrent sentence. He was also a first offender.

13. In the circumstances, I find that the sentence imposed to be slightly excessive. I therefore substitute the sentences in counts I and II with a fine of Khs. 300,000 in each count, in default the applicant shall serve 12 months imprisonment on each count.

14. The sentences in counts III and IV are affirmed, that is to say, the applicant is to pay a fine of Kshs 50,000 each count in default to serve 6 months imprisonment on each count. As per the law, in the event that the fines are not paid, the sentences shall run consecutively.

15. The applicant shall be repatriated to his country of origin upon the payment of the fine imposed or completion of his sentence.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF SEPTEMBER, 2023

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D. KAVEDZA

JUDGE

In the presence of:

