



REPUBLIC OF KENYA



**Kahugu v Republic (Criminal Revision E163 of 2023)  
[2023] KEHC 26732 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26732 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL REVISION E163 OF 2023  
RM MWONGO, J  
DECEMBER 20, 2023**

**BETWEEN**

**NANCY NJOKI KAHUGU ALIAS LUCY KARUANA KUIRA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Original Conviction and Sentence in Criminal Case No. E627 of 2021  
of the CM Magistrate's Court at Wang'uru before Hon. A. Lorot - CM)*

**RULING**

1. The Applicant was charged, convicted on her on plea of guilty, and sentenced on November 3, 2021 with offences as follows:
  1. Count 1 - Attempt to Steal Contrary to section 389 [Penal Code](#) - 3 years imprisonment.
  2. Count 2 - Personation Contrary to section 382 [Penal Code](#) - 3 years imprisonment.
  3. Count 3 - Forgery Contrary to section 349 [Penal Code](#) - 7 years imprisonment.
  4. Count 4 - Uttering a False Document Contrary to section 353 as read with section 349 [Penal Code](#) - 3 years imprisonment.
  5. Count 5 - Forgery Contrary to section 349 [Penal Code](#) - 7 years imprisonment.
  6. Count 6 - Uttering a False Document contrary to section 353 as read with section 349 [Penal Code](#) - 3 years imprisonment.
2. The trial magistrate directed that Counts 1 & 2 to run concurrently 3 & 4 to run concurrently and 5 & 6 to run concurrently.



3. The ultimate effect of the sentences is that the applicant will serve a combined continuous seven (7) years sentence of imprisonment.
4. The applicant seeks a lesser sentence. She is not challenging the convictions. Her grounds are that she is a first offender; was ignorant; that the sentences all emanated from a single transaction; that she is remorseful; that she has a diabetic condition; and will suffer prejudice if the application is not granted.
5. The state submits that the sentences as imposed are proper in compliance with section 14 *Criminal Procedure Code* and the *Sentencing Policy Guidelines*.
6. The sentences that are lawful for the offences charged are as follows:
  1. Count 1 - Section 389 - A term not exceeding 7 years.
  2. Count 2 - Section 382 - A term of up to 7 years if property is involved.
  3. Count 3 - Section 349 - A term of 3 years.
  4. Count 4 - Section 353 and 349 - A term of 3 years.
  5. Count 5 - Section 349 - A term of 3 years.
  6. Count 6 - Section 353 and 349 - A term of 3 years.
7. All the offences took place as part of one single event on October 1, 2021 whereby the applicant presented herself to Bingwa Sacco and uttered forged or personated with intent to defraud or withdraw moneys from the Sacco.
8. The Sentencing guidelines at Paragraph 7.13 provide:

“Where the offence emanates 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 sentences should run consecutively.”
9. The Sentencing guidelines encapsulate the principles of sentencing enunciated in cases from as far as back in 1946 in *Sawadi Mukara c/o Abdalla Aligwansa* [1946] 13 EACA 97; & *Peter Mbugua Kabui v Re* [2016] eKLR where the court held:

“As a general principle, the practise 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 and in one trial, it is not illegal to mete out a consecutive term of imprisonment.”
10. In the present case, the trial court lawfully sentenced the applicant except in the following with respect:
  - a) In Count 3, seven (7) years was meted when the maximum under Section 349 is three (3) years.
  - b) In Count 5, Seven (7) years was meted when the maximum under Section 349 is three (3) years.

## **Disposition**

11. Accordingly, I would substitute the seven (7) years sentence meted by the trial court in counts 3 and 5, for a sentence of three (3) years in accordance with section 349 *Penal Code* in each case.



12. The trial court made no error in my view, in determining the orders as to concurrency of the sentences, and I would not interfere with any other aspect of the sentence.
13. Accordingly, I determine that the applicant's sentence are all for a period of three (3) years on each count. Thus, the sentences are as follows:
  1. Counts 1 and 2, three (3) years imprisonment each, to run concurrently.
  2. Counts 3 and 4, three (3) years imprisonment each, to run concurrently.
  3. Count 5 and 6 three years imprisonment each, to run concurrently.
14. In addition, I hereby impose a fine of one hundred thousand shillings (Kshs.100,000/=) which shall be paid by the Accused or in default, a sentence term of 6 months/=.
15. Orders accordingly.

**DELIVERED AT KERUGOYA ON THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023**

.....

**R. MWONGO**

**JUDGE**

