



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otoma v Republic (Criminal Revision E045 of 2022)  
[2022] KEHC 12400 (KLR) (Crim) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12400 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL REVISION E045 OF 2022**

**JM BWONWONG'A, J**

**JULY 28, 2022**

**BETWEEN**

**ALICE WAIRIGIA OTOMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an revision from the original conviction and sentence of Hon J. Gandani  
CM in Kibera Chief Magistrates Court criminal case no. 2956 of 2012 Republic  
v Alice Wairigia Otoma, Jane Waitthera Lesaloi & Osilo Bruce Onyango)*

**RULING**

1. Alice Wairigia Otoma was charged with the offences of being in possession of forged currency notes contrary to section 359 of the [Penal Code](#) (Cap 63) Laws of Kenya and being in possession of papers for forgery contrary to section 367(a) of the Penal Code. The trial court convicted her on both counts and sentenced her to a fine of Kshs. 500,000/= in default one year imprisonment in count I and sentenced her to a fine of Kshs. 100,000/= in default to serve 8 months' imprisonment in count II. The sentences were ordered to run consecutively.
2. Vide her undated application filed in court on 15<sup>th</sup> March 2022, the applicant now requests this court to revise the sentence, by imposing a non-custodial sentence. She has also sought to have her sentences to run concurrently.
3. The applicant also filed a supporting affidavit in support of her application. The averments made in support of her application for revision are that she has reformed, rehabilitated and is ready to be reintegrated back into society. Secondly, that she is a first offender and is remorseful. She has urged the court to be lenient. Thirdly, that the applicant has reformed and is the sole breadwinner for her family. She also stated that she has established a personal relationship with God and has undergone biblical



studies that has helped her lead a moral and spiritual life. She has also urged the court to revise her sentence as prayed.

4. In response to the application, the respondent filed grounds of opposition dated 16<sup>th</sup> May, 2022. The grounds raised were that this court lacks jurisdiction to entertain the application. Secondly, that this court cannot entertain the application brought by way of revision where the remedy by way of an appeal is available. Thirdly, that the application offends the provisions of section 364 (5) of the Criminal Procedure Code (Cap 75) Laws of Kenya. Finally, the respondent has urged the court to dismiss the application for lacking in merit.
5. The application was canvassed by way of written submissions. The applicant did not file any written submission.
6. Counsel for the respondent, Ms. Maureen Akunja, filed written submissions. It was her submission that the applicant has not properly invoked the jurisdiction of this court to entertain the application. She has argued that the applicant has not demonstrated any illegality, incorrectness or impropriety in the sentence of the trial court to warrant the court to exercise its revisionary powers.
7. She further submitted that the application upsets the provisions of section 364 (5) of the Criminal Procedure Code, which provides that where an appeal lies from the sentence or order and no appeal has been filed, no proceedings by way of revision should be entertained. She submitted that the applicant's remedy lay in an appeal and not in revision.
8. In addition, the counsel submitted that if the court is inclined to entertain the application, it should take into consideration the seriousness of the offence with which the applicant was convicted. She further contended that the applicant had been granted a default sentence and an option of a fine which was to run consecutively.
9. She has maintained that the prayer for non-custodial sentence would be a mockery to the criminal justice system.

#### **Issues for determination**

Whether, the applicant should be granted the orders sought.

#### **Analysis and determination\*\***

10. The power of this court in its revisionary jurisdiction is founded under section 362 as read with section 364 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."

11. In addition to its revisionary jurisdiction, the Constitution in Article 165 (6) has expanded the supervisory jurisdiction of the High Court, which provisions read as follows:

"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."



12. The issue that I need to consider therefore is whether to revise the order of the trial court that the sentences of one year and eight months imprisonment on the two counts respectively should run consecutively or not and whether the court should consider imposing a non-custodial sentence.
13. The trial court is authorized by law to impose consecutive sentences. This is clear from section 14 of the Criminal Procedure Code which 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 therefor 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."
14. In view of the foregoing, I find that it was lawful for the lower court to impose consecutive sentences of imprisonment in the circumstances as prescribed by the law. The foregoing statutory provision was judicially approved in *Peter Mbugua Kabui vs Republic* [2016] eKLR, by the Court of Appeal which in that regard 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."
15. I have also considered the Judiciary 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."
16. The trial court was satisfied in this case that the applicant committed a series of offences, and did not err in ordering consecutive terms of imprisonment in respect of the two counts.
17. The applicant also prayed for a non-custodial sentence. The sentence provided for the offence of being in possession of forged currency notes under section 359 of the Penal Code is imprisonment for seven years. Similarly, a sentence of seven years is also provided for the offence of being in possession of papers for forgery contrary to section 367(a) of the Penal Code. The trial court was therefore lenient in the sentence of one year and eight months for the two counts.
18. In the premises, I find no basis to interfere with the sentencing discretion of the trial court with the result that the application fails and is hereby dismissed.

**RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**J M BWONWONG'A**

**JUDGE**



In the presence of-

Mr. Kinyua: Court Assistant

The applicant in person.

Mr. Mutuma for the respondent.

