



**Ndunde v Director of Public Prosecutions (Criminal Appeal
108 of 2019) [2022] KEHC 12340 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL 108 OF 2019
WM MUSYOKA, J
JULY 22, 2022**

BETWEEN

CHARLES NDUUNDE APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

JUDGMENT

1. The appellant, Charles Ndunde Chalande, had been convicted with another, in Mumias SPMCCRC No. 745 of 2017, of one count of making a false document without authority, one count of personation, two counts of forgery and one count of obtaining money by false pretences. He was sentenced to 3, 3, 5, 5 and 1 years in prison, respectively, to run concurrently.
2. He initiated the instant appeal against both the convictions and sentences. He lodged herein several petitions of appeal. However, when he was furnished with the record of appeal and the submissions by the respondent, he changed tact or stance, indicating that he was appealing only against sentence.
3. This is what he says in his submissions, dated 25th October, 2021 and lodged herein on even date:

“My Lordship, that I had previously appealed against both the sentence and conviction, but upon being furnished with both the prosecution submissions and court proceedings, I have found that the prosecution side gave sufficient evidence against me by which I now can’t oppose or object, am convinced and only beg for leniency and that the honourable court also considers the period I spend in remand so that it is part of the sentence my lordship.”
4. In view of the above, I shall consider the appeal only to the extent that it relates to sentence.
5. In total, the appellant faced seven counts of offences relating to dishonesty and cheating. He was convicted of five of them. In mitigation, he asked for forgiveness saying that he had children in school and that he needed to be assisted. In the sentencing ruling, the trial court considered that the offences



were serious and were rampant in the area. The court considered that a deterrent sentence was called for.

6. Sentence is discretionary. It is imposed by the trial court after assessment of the facts and circumstances. The trial court made that assessment. The offences relating to cheating and dishonesty are prevalent in the Mumias region, and the most effective way is to impose deterrent sentences. The prison terms imposed by the trial court are not unreasonable or outrageous in the circumstances. I shall not interfere with the sentences from that perspective.
7. The appellant has cited section 333 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. That is about considering the time spend in custody. The appellant was charged on 1st August 2017. He was bailed out on 31st October 2017. He was in custody for three months. It is a short period. But let it be taken into account in determining the dative period the appellant will have to serve in jail in all 5 sentences.
8. Overall, the appeal is without merit, but it is allowed only to the very limited extent stated in paragraph 7 here above. The appeal is disposed of in those terms. It is so ordered.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS
22ND DAY OF JULY 2022**

W M MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

