



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISCELLANEOUS CRIMINAL APPLICATION NO 39 OF 2020

RICHARD MOSE KEYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant has moved court via an application for court to consider consolidating his sentences arising from **Kisii HCCRA No 15 of 2015, Kisii HCCRA NO 51 of 2019** and **Principal Magistrate's Court at Ogembo Criminal Case No 1121 of 2013**.

2. The applicant had been charged before **the Principal Magistrate's Court at Ogembo Criminal Case No 1126 of 2013** with the offence of robbery with violence contrary to **section 296 (2) of the Penal Code** and convicted. The trial court sentenced him to life imprisonment.

3. The particulars of the offence were that on 1st July 2012 at Turwa sub-location, Nyamache District within Kisii County, the applicant jointly with others not before the court robbed Suzfine Kemunto Richard 2 TV sets, a solar panel, sonny radio cassette, 3 amplifiers, 2 mobile phones valued at Kshs 41,500/- and at the time of robbery used actual violence to the said Suzfine Kemunto Richard.

4. The applicant appealed the decision vides **Kisii HCCRA No 15 of 2015** and the sentence was reduced to 7 years.

5. He also faced a charge of stealing before the **Principal Magistrate's Court at Ogembo Criminal Case No 161 of 2014**. According to the particulars, the applicant stole from Evans Nyamweya Masesi a mobile phone valued at Kshs 2,200/- and Kshs 150/- on 5th February 2014 at Ogembo Law Courts. The applicant was found guilty by the trial court and sentenced him to serve 7 years imprisonment. He appealed against the sentence and the same was reduced to 4 years.

6. The applicant has averred that he also faced a charge of intimidation contrary to **section 238 (1) of the Penal Code** before the **Principal Magistrate's Court at Ogembo Criminal Case No 1121 of 2013**.

7. State Counsel, Mr. Otieno, concede that this court has jurisdiction to grant the prayers sought by the applicant.

8. In the three cases against the applicant, two were before the High Court while the other was before the Principal Magistrate Court at Ogembo, to which no appeal was preferred. In my view there is no provision that allows consolidation of sentences meted by courts of different hierarchies.

9. **Section 14(1) of the Penal Code** provides

10. When the court shall consider concurrent sentencing. It provides;

“(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.**”

11. Under **section 135(1) of the Criminal Procedure Code:**

“Any offences, whether felonies or misdemeanors, may be charged together in the same charge or information if the offences charged are found on the same facts, or form or are part of a series of offences of the same or similar character.”

12. The three criminal cases against the applicant were not founded on the same the same facts, or form or are part of a series of offences of the same or similar character.

13. The offences occurred on diverse dates and in different places. The charge against the applicant for the offence of stealing occurred when the applicant was serving sentence for the offence of robbery with violence.

14. In **Caroline Mumbi Ngondi & another v Republic [2020] eKLR** the court stated;

“...At the time the appeals were determined the respective appellate courts were never required by any of the applicants to make an order for the sentences in any of the two cases to run concurrently. The applicants did not lodge appeals in the Court of Appeal against the decision of the High Court.

19. The cardinal rule is that superior courts should not sit in review or on appeal over their own decisions. In my view that the right forum for the instant matters would be in a constitutional or in the Court of Appeal should the applicants want to challenge the appeal judgments. This court is aware of the provisions of Article 50(2)(q) of the Constitution of Kenya 2010 which guarantees as a tenet of fair hearing the right of a person if convicted, to appeal to, or apply for review in a higher court.

20. By reviewing the said sentences so as to make orders as to the same running concurrently, this court would abrogate itself the appellate jurisdiction to entertain an appeal from its own decision.”

15. Consequently, the application is found to be lacking in merit and in the circumstances, I decline to grant the prayers for the consolidation of the sentences.

DATED, SIGNED AND DELIVERED AT KISII THIS 25TH DAY OF FEBRUARY, 2021.

R. E. OUGO

JUDGE

In the presence of:

Applicant In person

Mr. Otieno Senior State Counsel Office of the DPP

Ms. Rael Court Assistant