



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CRIMINAL APPL. CASE NO. 215 OF 2019

MOHAMED IBRAHIM MOHAMEDAPPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

RULING

This matter comes up for the application of the applicant MOHAMED IBRAHIM MOHAMED filed herein on 19.7.2019. The same, brought under section 362 of the Criminal Procedure Code, basically seeks that this court do order that the sentences meted out against the applicant by the lower court do run concurrently. The applicant has sworn affidavit in support of the application.

The prosecution has objected to this application on grounds that the applicant had been convicted on upto 3 counts and given options of fines on each count, to run concurrently. That the court further ordered for compensation to take precedence over the fines.

I have considered the submissions of the parties. I have also perused and considered the proceedings of the lower court herein.

Section 362 of the Criminal Procedure Code empowers this court;

“to call for and examine the record of any criminal proceedings of a 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.”

It is therefore imperative that the applicant, who has moved this court by this application, satisfies this court of the incorrectness, illegality or impropriety in the finding or order of the lower court. Section 313 of the Penal Code prescribes for a term of upto 3 years. on count I, the trial magistrate meted out a sentence of 2 years imprisonment for counts II and III, a legal sentence of 1 year imprisonment was given out. In effect, the sentences as meted out were legal and proper.

In the sentence, the trial court gave the option of fines on each count. The trial magistrate, pursuant to the directions under section 37 of the Penal Code, properly ordered that the sentences do run consecutively.

And the trial magistrate, following the directions of section 31 of the Penal Code, ordered for compensation to take precedence over the fines.

The applicant has failed to convince this court of any error, illegality or impropriety on the part of the trial court or on the orders issued therein. I therefore do not find any merit in this application filed herein on 19.7.2019. I dismiss the same entirely.

D. O. OGEMBO

JUDGE

23.2.2021

Court:

Ruling read out in open court (online) in presence of Ms. Kimani for the state and the applicant (online) from Kamiti Prison.

D. O. OGEMBO

JUDGE

23.2.2021