



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVIEW NO. 18 OF 2020

AMON MUTHURI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

[1] Before me is a Motion dated 20/02/2020 expressed to be brought under **Section 362 and 365 of the Criminal Procedure Code**. The applicant seeks revision of his sentence meted out to him on 6/07/2018 at Githongo Law Courts.

[2] The application was supported by the applicant’s affidavit sworn on 20/02/2020.

[3] The applicant was charged with three counts. In Count I he was charged with assault causing bodily harm contrary to **Section 251 of the Penal Code**. Count II: being in possession of Cannabis Sativa (bhang) contrary to **Section 3 (1) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994**. Count III: malicious damage to property contrary to **Section 339 (1) of the Penal Code**. He pleaded guilty and on 6/08/2018 he was sentenced to serve 18 months, 2 years and 1 year’s imprisonment respectively. The sentences were to run consecutively. According to the applicant, the three offences having been committed at the same time, the learned magistrate ought to have ordered the three sentences to run concurrently. He also contended that his mitigation was not taken into consideration considering he is a first time offender.

[4] This matter was canvassed by way of oral submissions. Mr. Ndubi counsel for the applicant submitted that the general principle is that sentences should run concurrently unless there are exceptional circumstances but none exist in this case and deterrence does not arise. He continued: that the applicant is a first time offender who has learnt his lesson.

[5] M/s Nandwa counsel for the respondent submitted that the trial magistrate clearly stated that the reason for consecutive sentence was due to the applicant’s lack of respect to authorities. This was an act of deterrent measure. All factors were considered in the final orders. Thus, the sentence ought not to be disturbed as it was the Magistrate’s discretion.

ANALYSIS AND DETERMINATION

[6] The application before me is for revision of sentence. Are there legally justifiable grounds to revise the sentence imposed on the applicant?

[7] I have been called upon to exercise court’s supervisory jurisdiction provided for in **Sections 362 to 366 of the Criminal Procedure Code**. **Section 362** states 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.”

[8] Questions on whether the sentences imposed herein should run concurrently or consecutively have arisen. **Section 14 of the Criminal Procedure Code** 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 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.”

[9] The **Sentencing Policy Guidelines** provides when sentences should run consecutively or concurrently 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.

[10] Case law has also dealt with this subject. It was stated in the case of **Peter Mageria v Republic [1983] eKLR**:

“It has been said many times that where different offences form part of one transaction and are committed at the same time – as was the case here – then the sentences should be made to run concurrently unless there are exceptional circumstances for not doing so.”

[11] Also, the Court of Appeal in **Peter Mbugua Kabui vs Republic [2016] eKLR** 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.

[12] Therefore, a court of law may impose a concurrent or consecutive sentence as circumstances of the case and the law permit. However, this discretion should be exercised upon defined principles of law I have discussed.

[13] The offences in issue were committed on the same day and in the same transactions albeit against different complainants who are persons in authority. *As it was stated by the Court of Appeal, a general principle, if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be imposed. 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 lawful to mete out a consecutive term of imprisonment.*

[14] I note from the record that the applicant sought after and attacked the complainants for carrying out their duties which was to ensure that their area is secure. This was in sheer contempt of the authority bestowed on the complainants. However, the trial court failed to consider the principles that guide exercise of discretion in such matters and focused on disrespect to authority in meting out consecutive sentences. I note the applicant is a first time offender who pleaded guilty. It was also stated that he has learnt his lesson that it is wrong to disobey local leaders and authorities. In these circumstances, the trial court erred in imposing consecutive sentences. Accordingly, I set aside the order that the sentences shall run consecutively and substituted thereof with an order that the sentences shall run concurrently. The sentences shall be so computed. Orders accordingly.

Dated, signed and delivered at Meru this 23rd day of September, 2020

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F. GIKONYO

JUDGE

Representation

Maina for respondent

Ndubi for applicant - absent