



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 80 OF 2018

PETER MUSYOKI SAA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in Kitui Chief Magistrate's Court Criminal Case No. 918 of 2018 by Hon. J. M. Munguti (PM) on 30/07/18)

J U D G M E N T

1. **Peter Musyoki Saa**, the Appellant, was arraigned in Court on three Counts of **Obtaining Money by False Pretenses** contrary to **Section 313** of the **Penal Code**. He was convicted on his own plea of guilty and sentenced to pay a fine of **Kshs. 150,000/=** on each Count and in default he was to serve **one (1) year imprisonment** on each Count. The sentences were to run consecutively.

2. At the outset his Appeal was against the conviction and sentence but during the hearing of the Appeal he abandoned the Appeal against the conviction and urged that orders made should have been concurrent and not consecutive. He mitigated on sentence on the grounds that he has a wife and children and he supports his brothers and sisters whose education was likely to be interrupted. Further he sought reversal of the sentence imposed.

3. The State through learned Counsel, **Mr. Mamba** opposed the Appeal on grounds that the Appellant had not expressed any remorse or even told the Court what he had gained from being in custody.

4. I have considered rival averments and also re-examined the record as a whole.

5. The Appellant with an intention to defraud obtained from three (3) different individuals money by falsely pretending that he was in a position to install Kenya Power Company Tokens for them a fact he knew was false.

6. **Section 14** of the **Criminal Procedure Code** provides thus:

“(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.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

7. In the case of **Peter Mbugua Kabui vs. Republic (2016) eKLR** the Court of Appeal stated as follows:

“In the case of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97, the then Court of Appeal for Eastern Africa in a judgment read by Sir Joseph Sheridan stated that the practice is where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, to impose concurrent sentences. That is still good practice.

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.”

8. The charge sheet indicates that the offences were committed on different days. The Complainants were different and places were also different. Villages where the acts were done are provided in the particulars of the offence. Therefore, the trial Court did not misdirect itself in meting out the sentences imposed. The transactions were multiple and the victims were different therefore it was lawful for the sentences to run consecutively.

9. In the premises the Appeal lacks merit and is dismissed.

10. It is so ordered.

Dated, Signed and Delivered at Kitui this 29th day of April, 2019.

L. N. MUTENDE

JUDGE