

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.232 & 288 OF 2019

JAMES KEGECHA MAGIGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, James Kegecha Magige was convicted of three counts under the **Penal Code** in **Kibera Chief Magistrate's Court Criminal Case No.2042 of 2014**. He was convicted of **making a document without authority** contrary to **Section 357**, **uttering a false document with intent to deceive** contrary to **Section 357(b)** and **obtaining goods by false pretences**. In respect of the 1st count, he was sentenced to pay a fine of Kshs.300,000/- or serve two (2) years imprisonment. In respect of the 2nd count, he was ordered to pay a fine of Kshs.50,000/- or serve one (1) year imprisonment. In respect of the 3rd count, he was ordered to pay a fine of Kshs.50,000/- or serve one (1) year imprisonment. The default sentences were ordered to run concurrently. The sentence was meted out on 28th August 2019.

The Applicant faced other charges in **Kibera Chief Magistrate's Court Criminal Case No.859 of 2016**. He was convicted of **stealing a motor vehicle** contrary to **Section 278A** as read with **Section 268** of the **Penal Code**, **making a false document without authority** contrary to **Section 357(a)** of the **Penal Code** and **uttering a false document** contrary to **Section 353** of the **Penal Code**. In respect of the 1st count, he was sentenced to serve seven (7) years imprisonment. In respect of the 2nd count, he was ordered to serve seven (7) years imprisonment and in respect of the 3rd count, he was ordered to serve three (3) years imprisonment. The sentences were ordered to run concurrently.

The Applicant applied to this court to have the sentences consolidated and further, for the court to take into consideration that he had been in remand custody for three (3) years prior to his conviction. He was therefore asking for that period to be taken into account in determining the custodial sentence that he is to serve. The application was not opposed by the State. However, this court became aware that the Applicant had previously filed an application for revision of sentence before this court. That was in **Criminal Revision No.487 of 2017**. In the application, the Applicant was seeking consolidation of his sentences in two previous convictions. That was in **Nairobi Chief Magistrate's Court Criminal Case No.344 of 2013 (Milimani)** and **Nairobi Chief Magistrate's Court Criminal Case No.305 of 2016 (Milimani)**. In both cases, the Applicant was sentenced to serve custodial sentences.

The Applicant was therefore being economical with the truth when he states that he was in remand custody during the trial of the subsequent cases that are subject of this application. The Applicant was **NOT** in remand custody but was serving sentence at the time that he was convicted and sentenced in the subsequent cases. A fundamental tenet of justice is that he who seeks relief before the court must be candid and tell the court the truth. In the present application, it was clear that the Applicant was misleading the court when he claimed that he was in remand custody during the trial period in the subsequent criminal cases. This court cannot exercise its discretion in favour of an applicant who is prepared to blatantly lie to the court with a view to securing a decision in his favour.

The upshot of the above reasons is that the Applicant's applications lack merit and are hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF DECEMBER 2019

L. KIMARU

JUDGE