

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

APPELLATE SIDE

HIGH COURT REVISION NO. 3 OF 2017

(From conviction and sentence in Criminal

Case No. 158 of 2016 of the Chief Magistrate's Court at Ngong)

LEONARD KIBURU KIMUNYA.....APPLICANT

- VERSUS -

REPUBLIC.....RESPONDENT

RULING

I am in receipt of a letter dated 10/8/2017 regarding CR Case No. 158 of 2016 between Republic v Leonard Kiburu Kimunya. The complaint by the officer is in respect charge in request to the order on sentence by the trial magistrate.

The background of the matter is that the applicant was indicted with three counts contrary to section 387(a) of the penal code. The applicant admitted the charges. He was convicted on his own plea of guilty and sentenced to a fine of Ksh. 70,000/= on each count in default 1 year imprisonment. A further order by the trial magistrate was that the sentences to run concurrently.

I have perused the record and the application for revision and filed through the officer in charge. The law on concurrent sentences is exclusively for offences under the same transaction. However, in this case the learned trial magistrate ordered fines and in default a term of imprisonment to run concurrently.

The principle of law is that a sentence of imprisonment in default of a fine cannot be made to run concurrently with any other sentence. The trial magistrate order is therefore not specific by the word sentence to run concurrently. The record further reveals that the applicant did not pay the fine imposed totaling to Ksh. 210,000/=. He has served a term of imprisonment close to one year since 21/10/2016.

In the present application and being guided by section 37 of the Penal Code and section 380 and 382 of the Criminal Procedure Code, I am of the view that the order has not occasioned an injustice. I would not therefore interfere with the order by substituting it with consecutive orders. The period the applicant has been in custody is sufficient enough since the offences arose from the same transaction.

The request to amend the order to read concurrent is hereby dismissed.

Dated, delivered and signed in open court at Kajiado on 4/8/1017

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R. NYAKUNDI

JUDGE