



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 103 OF 2016

JULIUS LOSHERUA LEKIPILAAPPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Maralal Principal Magistrate's Court Criminal Case No. 908 of 2014 By Hon. C N Ndegwa Principal Magistrate on 18th May 2016).

JUDGMENT

1. **JULIUS LOSHERUA LEKIPILA**, the appellant herein, was convicted before the Principal Magistrate Court at Maralal on **two counts**. On the one count he was charged with the offence of illegal possession of a fire arm and on the other count he was charged with the offence of illegal possession of ammunition. **Both counts being contrary to Section 89 (1) of the Penal Code**. The trial court sentenced the appellant to seven years imprisonment on each counts sentence to run consecutively. The trial court ordered that those sentences were to start after the appellant completed his sentence of 12 months case for an offence of escaping from lawful custody.

2. The appellant in support of his appeal only sought that his sentence be ordered to run concurrently.

3. His plea was supported by the Principal prosecution Counsel Mr. Tanui.

4. The courts have frequently held that it is good practice for sentences for offences in the same transaction to be ordered to run concurrently. This was the issue discussed in the case **PETER MBUGUA KABUI V REPUBLIC [2016] eKLR** thus:

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

5. The learned trial Magistrate ordered the sentences of the appellant to run consecutively without assigning any particular reason or rationale. Because of lack of reason this court is justified to interfere

with the learned trial Magistrate's discretion in sentencing the appellant.

6. Accordingly the court hereby orders that the trial court's sentence of Julius Losherua Lekipila of 7 years imprisonment on count two and 7 years imprisonment in count three shall run concurrently. To that extent the appellant's appeal does succeed.

Dated and Delivered at Nanyuki this 2nd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: Julius Losherua Lekipila

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE