

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.280 OF 2015

LABAN NYOIKE MWANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Laban Nyoike Mwangi was tried before three different courts for allegedly committing three (3) different offences. He was charged with **obtaining goods by false pretences** contrary to **Section 313** of the **Penal Code** at Kibera Chief Magistrate’s Court (**Criminal Case No.614 of 2014**). He was convicted and sentenced to serve two (2) years imprisonment on 19th February 2014. He was charged with the offence of **stealing** contrary to **Section 275** of the **Penal Code** at Makadara Chief Magistrate’s Court (**Criminal Case No.1052 of 2014**). He was convicted and sentenced to serve three (3) years imprisonment on 3rd April 2014. He was further charged with the offence of **stealing** contrary to **Section 275** of the **Penal Code** before the Kikuyu Senior Principal Magistrate’s Court (**Criminal Case No.134 of 2014**). He was sentenced to serve eighteen (18) months imprisonment on 12th June 2014. The Applicant has applied to this court to have the three separate sentences consolidated. He told the court that he had learned from his mistakes and would not commit any other offence if the sentences imposed upon him were consolidated.

Ms. Atina for the State opposed the application. She submitted that the sentences the Applicant was serving were three (3) separate and different sentences meted out by three different courts. The three offences for which the Applicant was convicted arose out of three separate criminal transactions and therefore the sentences must be served separately.

This court has carefully considered the circumstances of this case. **Section 37** of the **Penal Code** provides thus:

“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof.

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.”

The present application falls in all fours within the application of this section of the **Penal Code**. The Applicant was convicted by separate courts on separate charges. There is no nexus between any of the charges that he was convicted of. The law requires that he serves the sentences one after the other. This court cannot interfere with the sentences imposed by the trial court and the manner of their execution.

The application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF MAY 2016

L. KIMARU

JUDGE