

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL REVISION CASE NO. 2 OF 2016

MULI KIOKO.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. Pursuant to a letter written by **Muli Kioko** (Applicant), a convict, seeking leniency, I called for the record of proceedings in the subordinate court presided over by **Hon. Lesootia, Ag. Senior Resident Magistrate** in order to satisfy myself of correctness, legality and propriety of the sentence meted out.

2. The Applicant was jointly charged with **Musyoka Malinda** and **Ileli Kitui** with the offence of **Burglary** contrary to **Section 304(2)** and **Stealing** contrary to **Section 279(b)** of the **Penal Code**. Particulars were that on the nights of **17th** and **18th** day of **May, 2013** at unknown time, at **Kangondi Location, Kangondi Sub-location** in **Kitui County** jointly broke and entered the dwelling house of **Christine Mutemi** with intent to steal therein and did steal from therein one hurricane lamp, one mattress, three sufurias, two bed sheets and one bed cover all valued at **Kshs. 8,000/=** the property of **Christine Mutemi**.

3. In the alternative, they faced a charge of **Handling Stolen Goods** contrary to **Section 322** of the **Penal Code**. Particulars were that on the **18th** day of **May, 2013** at about **11.00 a.m.**, at **Kangondi Location, Kangondi Sub-location** in **Kitui County** otherwise than in the cause of stealing dishonestly retained one hurricane lamp, one mattress, three sufurias, two bed sheets and a bed cover all valued at **Kshs. 8,000/=** the property of **Christine Mutemi**.

4. They pleaded guilty to the main charge at the outset and were sentenced to serve **three (3) years imprisonment** on each limb of the charge. The sentences were to run consecutively.

5. In the case of **Sawedi Mukasa s/o Abdulla Aligwaisa (1946) 13 EA CA 97**, the Court of Appeal for Eastern Africa stated that the practice is, where a person commits more than one offence at the same time and in the same transaction, save in exceptional circumstances, to impose concurrent sentences.

6. In **Peter Mbugua Kabui vs. Republic (2016) eKLR** it was stated that:

“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.”

7. The offence committed by the Applicant and his Co-accuseds were committed in a single transaction. All of them were first offenders. The trial court should have sentenced them to serve the sentences concurrently.

8. The Applicant and his Co-convicts have already served more than **three (3) years imprisonment**. In the result, I set aside the sentence imposed and reduce it to the term already served in respect of all the offenders. Consequently, all the three convicts/offenders shall be released forthwith unless otherwise

lawfully held.

9. It is so ordered.

Dated, Signed and Delivered at Kitui this 20th day of July, 2016.

L. N. MUTENDE

JUDGE