



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL NO. 219 OF 2013**

**JOHN MUSYOKI MAITHA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the sentence of Hon. S.N. Mwangi (RM) delivered on 14/02/2012 in Kangundo Senior Principal Magistrate's Court Criminal Case No. 469 of 2011)*

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*(Before Hon. B. Thurania Jaden J)*

**J U D G M E N T**

1. In Count I, the Appellant was charged with the offence of “forgery, contrary to **section 349** of the **Penal Code.**”

The particulars of the offence being that “on the 22<sup>nd</sup> day of January 2008 at **George B. Akoto Advocate's office** in **Nairobi** within **Nairobi County**, jointly with others not before court forged succession documents in respect of **Maitha Nzala** purporting to be genuine documents of **Maitha Nzala** (deceased).

2. In Count II, the Appellant was charged with the offence of “uttering false document contrary to **section 353** of the **Penal Code.**”

The particulars of the offence being that “on the 22<sup>nd</sup> day of January 2008 at **George B. Akoto Advocate's office Nairobi** within **Nairobi County** knowingly and fraudulently uttered forged succession documents in respect of **Maitha Nzala** (deceased) to **George B. Akoto** purporting to be genuine succession documents.”

3. The Appellant pleaded guilty and was sentenced to three years imprisonment in each count. The sentence ran consecutively.

4. The appeal is on sentence only.

5. During the hearing of the appeal, the Appellant submitted that the sentence ought to run concurrently, not consecutively. The learned counsel for the State conceded that the sentence should run concurrently.

6. **Section 14 (1)** of the **Criminal Procedure Code Cap 75 Laws of Kenya** provides as follows:-

**“Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.”**

7. Were the offences herein separate and distinct offences or were they committed in one transaction? As stated by the Court of Appeal in **BMN –vs- R 2014 e KLR:-**

**“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.”**

8. The facts that were read out to trial court show that the documents in question were forged at the chambers of **George Akole Advocates** in **Nairobi** and uttered to the said Advocate in the same office. This was a single transaction. The same ought to have attracted a concurrent sentence.

9. Consequently I allow the appeal. I substitute the orders for consecutive sentence with orders for concurrent sentence.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 24<sup>th</sup> day of February 2015.**

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**B. THURANIRA JADEN**

**JUDGEa**