

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.425 OF 2014

JOSEPH KAMAU GACHINGIRI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was charged with seven (7) counts under the **Penal Code**. The charges ranged from **making a false document without authority** contrary to **Section 357(a)** (2 counts), **uttering a false document with intent to defraud** contrary to **Section 357(b)** (2 counts), **stealing a motor vehicle** contrary to **Section 278(a)**, **personation** contrary to **Section 382(1)** to **obtaining money by false pretences** contrary to **Section 313**. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charges. After full trial, he was convicted of all the counts. In each count, he was sentenced to pay a fine. The fines ranged from Kshs.20,000/- to Kshs.80,000/-. In default, he was sentenced to serve sentences ranging from four (4) months imprisonment to one (1) year imprisonment. The Applicant was sentenced to serve the said sentences on 9th July 2013. He was unable to pay the fines imposed on him. The default custodial sentences that he was sentenced to serve were treated as if the trial court had ordered the Applicant to serve consecutive sentences instead of concurrent sentences. The Applicant is currently serving a cumulative custodial term of four (4) years and ten (10) months.

The Applicant applied to this court to have the default custodial sentences that he was sentenced to serve consolidated so that he serves concurrent sentences instead of consecutive sentences. Mr. Muthaura for the Applicant submitted that the court should exercise mercy on the Applicant and review the custodial sentences that were imposed on the Applicant. He was of the view that taking into consideration the fact that the offences for which the Applicant was convicted arose from one transaction, it was only fair that he be sentenced to serve a lesser custodial sentence than the one that was imposed on him. Ms. Aluda for the State opposed the application. She submitted that the sentences imposed on the Applicant were lenient taking into consideration the circumstances which the offences were committed. She was of the view that the complainant lost money as a result of the Applicant's criminal acts. The sentences imposed were proper and legal. In the premises therefore, she urged the court not to interfere with the sentences.

The Applicant applied for a review of his custodial sentences. When the trial court sentenced the Applicant to serve the custodial sentences, it was exercising judicial discretion. As an appellate court, this court will only interfere with such exercise of judicial discretion if it is established that the sentences was manifestly harsh and excessive or was so lenient as to amount to a miscarriage of justice. This court will interfere with the sentences if it is established that the sentences was unlawful. It will also interfere with the sentence if it is established that all the prevailing circumstances of the case were not taken into account when the Appellant was being sentenced by the trial court. In the present appeal, the Applicant urged the court to interfere with the custodial sentences that was imposed on him by the trial court. He pleaded with the court to exercise leniency on him. He told the court that he had learnt his lesson and should be allowed to be integrated back to society. On the other hand, the State urged the court to confirm the sentences that was imposed by the trial court because, in their opinion, it was reasonable and fitted the crime that was committed by the Applicant.

This court has carefully considered the rival submission made by the parties to this application. From the onset, it was clear to this court that the default custodial sentences that were imposed on the Applicant were legal. In fact, taken singly, the sentences imposed were lenient. However, taken cumulatively, the Applicant has a case when he pleads that the default custodial sentences imposed on him was harsh and excessive. Although the State opposed the application for revision of the custodial sentences, this court is of the view that the Applicant has made a case for this court to consider his application for reduction of sentences. In the premises therefore, this court will consolidate all the custodial sentences imposed on the Applicant and sentence the Applicant serve one custodial sentence.

The Applicant is therefore sentenced to serve three (3) years imprisonment as a consolidated sentence. The said sentence shall take effect from 9th July 2013 when the Applicant was sentenced by the trial court. It is so ordered.

DATED AT NAIROBI THIS 18TH MARCH 2015

L. KIMARU

JUDGE