



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
HIGH COURT CRIMINAL APPEAL NUMBER 129 OF 2012

ROBERT WAKARUNGU NDIRANGU..... APPELLANT

VERSUS

REPUBLIC OF KENYA.....
RESPONDENT

(from original conviction and sentence in Criminal Case Number 2979/2010 at Nyahururu of Hon. C.K. Obara (Senior Resident Magistrate) at Nyahururu Law Courts delivered on 14th May, 2012

REASONS FOR JUDGMENT DELIVERED ON THE

14TH MARCH 2015

1. On the 14th March, 2015, this court allowed the Appellant's appeal arising from the conviction and sentence handed down by the Honourable Senior Resident Magistrate C.K. Obara on the 14th May, 2012.

The accused was found guilty and convicted for the offences of obtaining by false pretence contrary to Section 313 of the Penal Code.

The offences were alleged to have been committed on various dates at various places. The amounts of money obtained by false pretences were also various and obtained from different persons. By their nature, the offences were similar and all committed in similar circumstances.

2. After full hearing by the trial court, the accused was found guilty with regard to 5 counts and was convicted accordingly under Section 215 of the Criminal Procedure Code. The Judgment was delivered by the Principal Magistrate L.M. Wachira on behalf of the Hon. C.K. Obara- Senior Principal Magistrate on the 14th May, 2012.
3. In passing sentence, the Honourable magistrate noted that the accused belonged to cartel that worked together and subjected desperate citizens of this country to untold mental anguish by promising them non existent jobs and letters of employment. For counts number 1 to 7 the accused was sentenced to one year jail term for each thus 7 years. For counts 8 to 12, the accused was sentenced to 1¹/₂ years imprisonment for each count, thus 5 years. The sentences were ordered to run consecutively.
4. Being dissatisfied with the said sentence the accused appealed against the sentence only. In his

submissions, the accused submitted that since the offences were similar in nature and were committed in similar circumstances, the sentence should have been ordered to run concurrently and prayed that the said sentence amounting into total to 14^{1/2} years imprisonment be ordered to run concurrently meaning 7^{1/2} years.

5. Learned state counsel Mr. Chirchir did not object, and urged the court to allow the appeal. The appeal was allowed and ordered that the sentence imposed upon the appellant shall run-concurrently to a maximum of 7^{1/2} years imprisonment from the 14th May, 2012.
6. The purpose of sentencing is to disapprove or denounce unlawful conduct as a means to deter the offender from committing further offences.

In the case **Republic -vs- Sawedi Mukasa S/o Abdullah Aligwaisa 13 EACA 97**, the court held that where a person commits more than one offence at the same time and place and in similar circumstances,

save in very rare circumstances, the sentences ought to run concurrently, but it is at the discretion of the court.

7. In this matter, I find no exceptional circumstances that may have influenced the trial court not to order the sentences to run concurrently. Indeed the state counsel had no objection at all. As the court's discretion is personal to the individual judicial officer, I find no fault in the manner the trial court exercised its discretion upon hearing the appellant. I am persuaded to exercise my judicial discretion after taking all circumstances of the case into account and set aside the trial court's order that the sentences imposed on the appellant on each of the twelve counts, totaling to 14 ½ years imprisonment, and substitute it with an order that the said sentences in all the twelve counts run concurrently. The appellant shall therefore serve imprisonment for a term of 7^{1/2} years from 14th May, 2012, the date the trial court delivered its judgment.

Dated signed and delivered in open this 25th day of June 2015

JANET MULWA

JUDGE

In the presence of:

Appellant - present in person

Ms. Ngovi - for Respondent/state

Court clerk - Lina.