

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.4 OF 2013

CHARLES WACHIRA MATHENGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Charles Wachira Mathenge was convicted in six (6) different criminal cases on similar offence of **obtaining money by false pretences** contrary to **Section 313** of the **Penal Code**. In all the six cases, the Applicant was convicted of multiple counts of obtaining various sums of money from various complainants under the false consideration that he would sell them particular motor vehicles. In all the six cases, the Applicant was fined or in default thereof he was ordered to serve various terms of imprisonment. According to the Applicant, the default terms totals 16 years in prison. The Applicant has pleaded with the court to consolidate his sentences so that all the sentences, although made at various times, be consolidated so that he serves the maximum sentence of approximately 3 years in prison. The Applicant submitted that during the hearing of the various cases, he made effort to refund the complainants. However, there was no evidence that such refund was made.

Ms. Aluda for the State opposed the application. She submitted that the Applicant was not remorseful. He had made no effort to reconstitute the money that he took from the various complainants. She was of the view that the offences took place at various places and at various times and therefore this court cannot, in the circumstances, consolidate the respective cases. She reiterated that due to the Applicant's criminal conduct, the complainants lost substantial sums of money. There was no prospect that the said amounts would be refunded to them. She urged the court to disallow the application.

This court has carefully considered the submission made by the Applicant and by Ms. Aluda for the State. The court also perused the various records of the subordinate court that resulted in the conviction of the Applicant. Although this court has discretion to consolidate the various sentences that were imposed on the Applicant, by various trial courts in this court's considered opinion, the Applicant does not deserve the exercise of such discretion. It was clear from the said records that the Applicant engaged in a deliberate and willful conduct whose ultimate aim resulted in the defrauding of various complainants of their money. In all instances, the Applicant purported to be in a position to sell motor vehicles to the complainants, which fact he knew to be false. He obtained monies from the said complainants knowing very well that he was not in a position to deliver the said motor vehicles. The Applicant continued with the fraud even during the pendency of some of the cases. It was apparent to this court that the Applicant is a serial offender. The farthest he is kept from innocent hardworking Kenyans, the better.

This court finds no merit with the Applicant's application to have his various sentences consolidated. The application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF JULY 2015

L. KIMARU

JUDGE