



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

CRIMINAL REVISION NO. 30 OF 2015

SIMON MUNGAI WANJIRU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

The Applicant was charged with seven offences of causing death by dangerous driving contrary to section 46 of the Traffic Act. He pleaded not guilty to all the offences. After trial at the Principal Magistrate's Court at Mavoko Law Courts in Criminal Case No 539 of 2013, Hon. T.A. Odera, the learned Principal Magistrate convicted the Appellant of all the seven offences on 9th December 2014. The learned trial magistrate sentenced the Applicant to pay a fine of Kshs 50,000/= or three and a half (3½) years imprisonment for each offence. It was also ordered by the magistrate that the total fine was Kshs 350,000/= and that the sentences were to run consecutively.

The Applicant subsequently filed a Chamber Summons application and supporting affidavit filed in Court on 11th May 2015, and brought under section 364 (1)(a) of the Criminal Procedure Code. He sought revision orders that the sentences for the seven offences that were imposed to run consecutively be consolidated and run concurrently. I have considered the application made by the Applicant, and I am guided by *section 14* of the *Criminal Procedure Code* which provides for circumstances in which a court can direct sentences to run concurrently or consecutively as follows:

“(1) Subject to sub-section (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.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7 (1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences –

(a) of imprisonment which amount in the aggregate to more than fourteen years or twice the

amount of imprisonment which the court in the exercise of its ordinary jurisdiction, is competent to impose whichever is less or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.”

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 and/or 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. In ***Ondiek – v- R (1981) KLR 430***, it was also stated by the Court that the practice is that if a person commits more than one offence at the same time in the same transaction save in exceptional circumstances, the sentences imposed ought to run concurrently. Likewise in ***Nganga – v- R, (1981) KLR 530***, the High Court held that concurrent sentences should be awarded for offences committed in one criminal transaction.

Further, in ***R.V.Nathani (1965) EA 777*** it was held that for different acts to make up one transaction, it must be inherent in them that from the very beginning of the earliest act the other acts should either be in contemplation, or necessarily arise therefrom, or from the very nature of the transaction in view, form component parts of one whole. Concurrent sentences ought therefore to be exclusively imposed for related offences which arise from a series of incidents connected with each other.

In the present application I note from the particulars in the charge sheet in the trial court that the seven offences of causing death by dangerous driving arose from the same accident that occurred on 27th January 2013 at 7.00 pm along the Isinya-Kitengela Road, wherein the Applicant was the driver of motor vehicle registration number KBG 991 K Man Tipper which he was charged with driving recklessly and causing the death of Ruth Waithera Gitonga, Ruth Wanjiru Maina, Kesia Wanja Njue, Francis Kimeu Kyengo, Patrick Ochieng Onyango, Hassan Nzangi, and John Njenga. He was also charged with causing extensive damage to motor vehicle registration numbers KAJ 258V, a Mercedes Benz lorry; KBN 593 R, a Toyota Noah; KAW 178Y an Isuzu Pickup; and KBS 986 W, a Subaru station wagon.

I find that given that the since the seven offences committed by the Applicant were committed on the same day and arose from the same transaction, there was an error by the trial magistrate in her decision to have the seven imprisonment sentences run consecutively and not concurrently. The Applicant's application therefore succeeds only to the extent that the order by the trial magistrate that the imprisonment sentences for the seven offences committed by the Applicant are to run consecutively is set aside, and is substituted by an order that the imprisonment sentences of three and a half (3½) years for each offence shall run concurrently. The substituted sentences shall take effect from 16th January 2015 when the Applicant was sentenced by the trial court.

It is so ordered, and the Court's orders herein to be furnished to the Applicant and the Prosecution.

DATED AT MACHAKOS THIS 25TH DAY OF SEPTEMBER 2015.

P. NYAMWEYA

JUDGE