



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC.CRIMINAL APPL. NO. 33 OF 2014

KIPLAGAT KIPYEGO APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. In the Notice of Motion dated 22nd January, 2014 and filed in court on 30th January, 2014, the applicant urged the court to order that the sentences imposed on him by two different courts in two criminal cases namely criminal case No. 588 of 2011 and criminal case No. 2109 of 2011 were to be served concurrently or in the alternative, that the sentence passed in criminal case No. 209 of 2011 ought to have taken effect from the date of his conviction.
2. The application is premised on grounds that the applicant was convicted in criminal case No. 2109 of 2011 on 10th February 2012 when he was already serving a five year term of imprisonment in Criminal case No. 588 of 2011; that when he finished serving the five year term, the prison authority insisted that he was to start serving the three year sentence imposed in criminal case No. 2109 of 2011.
3. According to the applicant, the trial court in criminal case No. 2109 of 2011 when passing sentence though aware of the fact that he was already serving sentence in criminal case No. 588 of 2011 did not order that the sentences in both cases should run consecutively and that therefore, the sentence handed down in Criminal case No. 2109 of 2011 should have started running from the date it was passed.
4. The state opposed the application. Learned prosecuting counsel *Miss Mwaniki* submitted that the sentences passed in both criminal cases cannot run concurrently since the sentences were passed in separate trials; that under **Section 14** of the **Criminal Procedure Code**, sentences can only be ordered to run concurrently if they were passed within one trial; that since the sentences the subject of the application were imposed in different trials, the sentence passed in the latter case could only be served after the applicant had finished serving his prison term in criminal case No. 588 of 2011.
5. I have considered the application and the rival submissions made by the applicant and the state. It is my view that this application was filed by the applicant out of ignorance of the law governing the execution of sentences involving terms of imprisonment which i must say is understandable considering that the applicant is a lay man.

I agree with *Miss Mwaniki's* submission that **Section 14** of the **Criminal Procedure Code** applies only in situations where a person is convicted of several distinct offences but in one trial. In that case, the trial court has discretion to order that the sentences imposed in respect of the different offences should run either concurrently or consecutively. If the sentences were ordered to run concurrently, they would be

served simultaneously but if they were to be served consecutively, the convict would have to serve the sentence meted out for each offence one after the other.

6. The applicant in this case was convicted with different offences in two different trials. It is therefore evident that **Section 14** of the **Criminal Procedure Code** does not apply to the applicant's situation. In my view, the provision of the law which squarely applies to the applicant is **Section 37** of the **Penal Code**. This section is in the following terms:-

“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or any part thereof”.

7. It is clear from the above provision of the law that where a person already convicted of a criminal offence is subsequently convicted of another offence in a different criminal case and a term of imprisonment is imposed in the latter case, unless the trial court in passing the subsequent sentence orders that it will run concurrently with the previous sentence, the subsequent sentence shall be executed after expiration of the earlier sentence.

8. In this case, the applicant has admitted that the trial court in criminal case No. 2109 of 2011 though aware that he was serving another sentence in criminal case No. 588 of 2011 did not order that the three year term imposed on him in that case was to run concurrently with the sentence he was already serving in Criminal case No. 588 of 2011. It then follows that the applicant was under **Section 37** of the **Penal Code** required to start serving the three year sentence after completing the five year sentence imposed in Criminal case No. 588 of 2011.

9. The applicant's argument that the three year sentence in Criminal case No. 209 of 2011 ought to have taken effect on the date of his conviction or on the day it was pronounced is to say the least misconceived and legally unsustainable since no order was made to that effect by the trial court.

In the premises, if the applicant has already served the sentence in Criminal case No. 588 of 2011, he should now start serving the sentence handed down to him in Criminal case No. 209 of 2011 unless the same has been overturned on appeal.

10. In the result, the Notice of Motion dated 22nd January, 2014 is clearly devoid of merit and it is accordingly dismissed.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 16th day November 2015

In the presence of:-

The Applicant

Miss Mwaniki for the Republic

Mr. Lesinge Court clerk