



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NO. 50 OF 2015

JOHN NJOGU NGUGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein was tried and convicted in separate trials as follows:

1. In Chief Magistrate's Court at Kibera **Criminal Case No. 6373 of 2012 - Republic vs John Njogu Ngugi**. He was charged with stealing a motor vehicle contrary to Section 368 as read with Section 278 (A) of the Penal Code. He was convicted and sentenced to three years imprisonment on 28th November, 2014.
2. In the Chief Magistrate's Court at Milimani, **Criminal Case No. 992 of 2013 Republic vs Martha Muiti Kithambi & 2 others**. The Applicant was one of the accused persons. The charge was of obtaining money by false pretences Contrary to Section 313 of Penal Code. He was found guilty, convicted and sentenced to serve two years imprisonment on 31st October, 2014.
3. In the Chief Magistrate's Court at Milimani, **Criminal Case No. 1002 of 2013 – Rep vs John Njogu Ngugi**. He was charged with obtaining money by false presentences contrary to Section 313 of Penal Code. He was convicted and sentenced to two years imprisonment on 20th February, 2014.

His prayer in this application is that the court orders that the sentences in the three convictions be ordered to run concurrently. Section 37 of the Penal Code guides the court in the manner in which sentences may be ordered to run cumulatively when an accused person is convicted in more than one count. The same provides as follows:

“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 of any part thereof.”

My interpretation of this provision is that nothing stops the court from ordering the execution of concurrent sentences even if the sentences arise from varied convictions. It is also within the discretion of the court to exercise this authority judicially. That is to say that, in executing concurrent sentences, each case would depend on its circumstances. In the present case, the offence for which the Applicant was convicted in criminal Case No. 6373 of 2012 was a felony and attracted a penalty of up to seven years imprisonment. He escaped with a moderate sentence of three years imprisonment. It may not serve justice to clamp this sentence with the other sentences for which the penalties are misdemeanours. In that regard, and in exercise of the discretion conferred on me by **Section 37 of the Penal Code**, I make the following orders;

(a). That the sentences imposed in both **Criminal Cases No. 992 of 2013 and 1002 of 2013** do run concurrently.

(b). That the above order (a) shall be effective after the Applicant completes serving the sentence in **Kibera Criminal case no. 6373 of 2012**. For avoidance of doubts, the concurrent sentences in cases **No. 992 and 1002 of 2013** shall be consecutive to the sentence in **Criminal case No. 6373 of 2012**.

It is so ordered.

DATED and DELIVERED this 12th day of **November, 2015**.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Applicant present in person.*
- 2. M/s Ndombi for the Respondent.*