



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL APPEAL NO. 57 OF 2015**

**STEPHEN NJUE NYAGA..... APPELLANT/APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**RULING**

1. The applicant filed appeals Nos. 45, 57 and 63 all of 2015 against the judgments by the trial magistrates in Embu Chief Magistrates Criminal cases Nos. 903 of 2012, 348 & 349 both of 2013.
2. In this Appeal No. 57 of 2015, the applicant has filed an application for bail pending appeal dated 19th August 2015. He states that has filed similar applications in the Appeals Nos. 45 and 63.
3. The application before this court is for consolidation of the three appeal files Nos. 45, 57 and 63 for ease of prosecution of the applications for bail pending appeal. The grounds relied on by the applicant are that the appeals are similar since CM Criminal cases Nos. 348 & 349 both of 2013 originated from CM Criminal case No. 903 of 2012 which contained several counts and had to be split in accordance with the provisions of Section 135 of the Criminal Procedure Code. Due to the similarity of the place of the charges where the complainants was the same person and the place of the offence the same, the applicant wants the three appeals to be consolidated.
4. The application was opposed by Ms Nandwa for the respondent. She argued that the three split criminal cases were heard by different magistrates and it will not be prudent to consolidate them given that the facts were different and convictions separate.
5. I have looked at the three appeal files including the one before me. This appeal is against judgment of the trial magistrate in CM Criminal case No. 348 of 2013. The applicant faced 12 counts in this case and was convicted of all the counts and sentenced accordingly.
6. In criminal cases Nos. 903 of 2012 and 349 of 2013, the applicant was charged with 12 counts in each case, convicted and sentenced accordingly.
7. Although the witnesses were the same most of them employees of Daima Sacco who is the complainant in all the cases am of the considered opinion that it will not be procedural to consolidate the three files for purposes of hearing the application for bond. The splitting of the original file No. 903 of 2012 was intended to comply with Section 135 of the criminal procedure code and with decisions made by superior courts on the issues of framing and joinder of counts in an a criminal information. In most criminal cases, evidence in demonstrates that each offence may have different facts and circumstances. The convictions were by three different courts and the sentences imposed were different.
8. In respect of this issue of consolidation and of joinder of counts, I wish to rely on two decisions:-

In the case of ***RICHARD LENGURO RAMACHA & 2 OTHERS VS REPUBLIC [2012] eKLR*** the applicants sought for consolidation of appeals .The court held that:-

*In the above cited case, the court found that 19 counts were an overload of the charge*

sheet. In this case, the appellants faced a total of 17 counts. On the basis of the above decisions, if we allow consolidation of all the appeals, the charge sheet will be overloaded."

9. To support its decision, the court cited the case of **OCHIENG VS REPUBLIC [1985] KLR 252**, The Court of Appeal had occasion to deal with an appeal in which the appellant had been charged with 44 counts. The court held that it was undesirable to charge the accused person with so many counts in one charge sheet as that may occasion prejudice. The court said that ordinarily, one should be charged with not more than twelve counts in one charge sheet. In making that decision, the court relied on the English decisions in **R V HUDSON AND HAGAN [1952] 36 CAR 94 AND R V NOVAC & OTHERS [1977] 65 CAR 107** at pg 118. In the later case, the court said:-

*We cannot conclude this judgment without pointing out that, in our opinion, most of the difficulties which gave bedeviled this trial, and which have led in the end to the quashing of all convictions except on the conspiracy and related counts, arose directly out of the overloading of the indictment. How much worse the difficulties would have been if the case had proceeded to trial on the original indictment, containing 38 counts, does not bear contemplation. But even in its reduced form the indictment of 19 counts against four defendants resulted, as is now plain, in a trial of quite unnecessary length and complexity.*

10. It is in order to treat each appeal separately for all intents and purposes. The applications for bail pending appeal should be heard separately based on the same principles.
11. I find no merit in the application and I dismiss it accordingly
12. I hereby direct that this a copy of the ruling be placed in each of the appeals No. 45 and 63 both of 2015.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 30<sup>TH</sup> DAY OF DECEMBER, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

- 1. Applicant present in person.**
- 2. Ms Nandwa for respondent.**