



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL APPEAL NO. 420 OF 2013**

STANLEY MWANGI KARANJA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

**(Being an appeal against sentence in Thika Chief Magistrate's Court Criminal Case No. 488 of 2009(Hon. Wachira) on 29<sup>th</sup> February, 2012)**

**JUDGMENT**

The appellant in this case was confronted with three counts of offences arising out of a series of transactions alleged to have been perpetrated by the appellant and others not before court.

In the first count, the appellant was charged with the offence of conspiracy to defraud contrary to **section 317** of the **Penal Code**. According to the particulars of the offence, on diverse dates between 1<sup>st</sup> December, 2008 and 12<sup>th</sup> February, 2009 at Ruiru town, jointly with others not before court, by deceit and fraudulent means, the appellant conspired to defraud Daniel Kithaka Mutongu a sum of Kshs. 520,000/= by falsely pretending that he would sell to the said Daniel Kithaka Mutongu land parcel No. RUIRU/KIU BLOCK 2/3711 a fact he knew and believed to be false.

The second count against the appellant was that of making a false document contrary to **section 347 (a)** of the **Penal Code**. Here, the particulars were that on 29<sup>th</sup> October, 2003 at Ruiru town in Thika District within central province, jointly with others not before court, the appellant made a certain document namely a title deed purporting it to be a genuine title deed made and signed by the land registrar, Thika.

In the third and final count, the appellant was charged with the offence of obtaining money by false pretences contrary to section 313 of the Penal Code. Under this count, it was stated in the particulars of the offence that on diverse dates between 11<sup>th</sup> December, 2008 and 12<sup>th</sup> February, 2009 at Ruiru Township in Thika District within central province, jointly with others not before court with intent to defraud obtained from Daniel Kithaka Mutongu Kshs. 520,000/= by falsely pretending that they were in a position to sell him a parcel of land No. Ruiru/ Kiu Block 2/5711 a fact they knew and believed to be false.

The appellant pleaded not guilty to all the three counts and after a full trial in which seven witnesses testified for the state and the appellant gave an unsworn testimony, the learned magistrate convicted the appellant on all the three counts and sentenced him to two years imprisonment on each of those counts with the sentences running concurrently.

In his grounds of appeal which he filed together with the petition dated 20<sup>th</sup> March, 2012 the appellant has asked this court to make an order that the two year sentences meted out for each of the three counts of which he was convicted do run concurrently because in his view, the learned magistrate forgot to make that order.

The appellant has not taken issue with the convictions and except for what he thinks to have been an omission on part of the learned magistrate, he has no problem with the sentence as well. When he made oral submissions in court on 14<sup>th</sup> October, 2013 when this appeal came up for hearing, the appellant reiterated this position, and said that he has now been in prison for four years and the sentences against him are running consecutively when they ought to have ran concurrently.

Counsel for the state, Ms Maranga, said that the judgment in the case was delivered on 29<sup>th</sup> February, 2012 and by 14<sup>th</sup> October, 2013 when this appeal was heard the appellant had not served his full term in prison; she asked the court to uphold the sentence.

When a convict contests a judgment of a the subordinate court in a criminal trial, it is always incumbent upon this court as the first appellate court, to consider the evidence afresh and make its own conclusions always bearing in mind that it is only the trial court that had the advantage of hearing and seeing the witnesses. I would be prepared to take this path but looking at the appellant's appeal, such a discourse would be no more than an academic exercise. I say so because the appellant does not contest the conviction and the sentence. His case is based on a misapprehension that his sentences are running consecutively rather than concurrently. This fear is discounted by the record itself.

The record is clear at page 41 of the learned magistrate's judgment that the sentences were to run concurrently. The learned magistrate said:-

***“He is sentenced to serve 2 years imprisonment on each of the counts. The sentences will run concurrently.”***

The learned magistrate, however, noted that the appellant had conceded serving another sentence as at the time she was sentencing him.

The record is thus clear and there is no basis for any fear that the appellant's prison sentences are running consecutively rather than concurrently because of an omission on the part of the learned magistrate; there is no such an omission apparent on record.

The only remark I need make as far as the sentences against the appellant are concerned is that as at the time the appellant was convicted on 29<sup>th</sup> February, 2012 he had been in custody since 22<sup>nd</sup> October, 2009, more than one year before he was convicted and sentenced. The period that the appellant was in custody before he was convicted and sentenced would have been taken into account, were it not for the fact that he was serving another prison term under a separate warrant; Section 333 (2) of the Criminal Procedure Code provides some guidance in this respect. Since that section makes reference to section 333(1) of the Code, it is appropriate to quote the entire section for better understanding. It says:-

***333.(1) A warrant under the hand of the judge or magistrate by who a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.***

***(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it is pronounced, except where otherwise provided in this Code.***

***Provided that where a person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.***(Underlining mine).

Although it does not appear that the learned magistrate took into account the period the appellant had been held in custody when sentencing him, nothing much would have turned on it, and this provision of the law would be of little help to the appellant since the appellant was already serving another sentence under a different warrant. The appellant himself confirmed that he had served almost a year of an 18-month sentence as at the time he was convicted and sentenced. In these circumstances, the most relevant provision of the Criminal Procedure Code as far as sentencing of the appellant is concerned, is section 15 thereof;

This section provides as follows:-

***15.(1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (hereinafter called the “the operational period”) the offender commits another offence, whether that offence is punishable by imprisonment, corporal punishment or by a fine.***

***(2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.***

***(3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.***

Going by the provisions of section 15 of the Criminal Procedure Code and more particularly section 15(3) thereof, the commencement of the sentences meted out against the appellant could only take effect after completion of the sentence the appellant was already serving.

In the premised and for avoidance of doubt and for the record, I hold as follows:-

1. The sentences meted out against the appellant by the learned magistrate are upheld by this honourable court;
2. Those sentences run concurrently but pursuant to the provisions of section 15(3) of the Criminal Procedure Code, the sentences are consecutive to the sentence the appellant was serving prior to the subsequent conviction and sentences;
3. The term of the sentences, the subject of this appeal, commenced (or will commence, if the prior sentence has not been completed), upon completion of the prison term the appellant was serving prior to his subsequent conviction and sentences in the judgment which is the subject of the appeal herein.

Subject to what I have held herein above, the appellant's appeal is dismissed.

**Signed, dated and delivered in open court this 27<sup>th</sup> day of January 2014**

**Ngaah Jairus**

**JUDGE**