

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO .236 OF 2013

JOEL MWANGAGIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Kitui Chief Magistrate’s Court Criminal Case No. 105 of 2011 by Hon. B.M. Kimemia, PM 18/9/2013)

JUDGMENT

1. The appellant was charged with five (5) counts of forgery contrary to **section 345** as read with **Section 349** of the **Penal Code** and five (5) counts of stealing contrary to **Section 268** as read with **Section 275** of the **Penal Code**. Particulars of each count are as per the charge sheet filed as part of the record of appeal.
2. He pleaded not guilty to the charges. He was tried, found guilty and convicted on all charges. He was sentenced to serve **two (2) years** imprisonment on each count. The mode of running of the sentences was ordered as consecutive. Being aggrieved by the decision of the court the appellant appeals against sentence. It is his averments that the sentences should have been made to run concurrently.
3. The appeal was not opposed. Learned State Counsel, **Mr Njogu** conceding to the appeal quoted the provisions of **Section 12** and **14(1) (3) (a)** of the **Criminal Procedure Code**. He stated that the appellant was charged with offences that emanated from the same transaction, therefore sentences passed were illegal.
4. Combining sentences by a court is lawful (*see Section 12 of the Criminal Procedure Code*).
5. The offences the appellant was charged with were offences that were committed in the same criminal transaction. The law provides that concurrent sentences are to be awarded where the offences are committed in one criminal transaction. (*see Ng’ang’a versus Republic [1981] KLR 53*) *Gervasio Njugi Muriithi versus Republic Criminal Appeal 187 of 2011*).
6. The principle to guide the court in reaching the decision to interfere with sentence was stated in the case of *Diego versus Republic (1985) KLR 621* where it was held that;-

“The appellate court should not interfere with the discretion by a trial judge as to sentences except in such cases where it appears that in assessing the sentence the judge acted on wrong principles...”

7. This is a case where the learned trial magistrate acted on wrong principles regarding sentencing. In the premises I do correct the error made in respect of the mode of sentence. Instead of the sentences running consecutively I do order the sentences shall run concurrently from the 18th day of September, 2013.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of JULY, 2014

L.N. MUTENDE

JUDGE