

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

MISCELLANEOUS CRIMINAL APPLICATION 344 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

GERALD MUNGAI MWANGI.....APPLICANT

RULING

The applicant was convicted of two offences namely obtaining money by false pretences contrary to Section 313 of the Penal Code and stealing contrary to Section 275 of the Penal Code. He was then sentenced to 3 years imprisonment on each count and sentences ordered to run consecutively such that he was to serve six years imprisonment. Following the said conviction and sentence, he filed an application by way of Chamber Summons in which he pleaded that his prison terms should be consolidated.

When the application came up for hearing the learned counsel for the Republic did not oppose the application and conceded that the sentences should be ordered to run concurrently. I have looked at the proceedings starting with the charge sheet. The two offences were committed during the same transaction and the complainant in the offences in which the applicant was convicted is the same person.

With respect I agree with the learned counsel for the Republic and under Section 364 of the Criminal Procedure Code Cap 75 Laws of Kenya, I hereby set aside the order of the learned trial magistrate and substitute therefor and order that, the sentences shall run concurrently. The complainant has a remedy in civil jurisdiction to reclaim the money lost.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th day of June , 2012.

A. MBOGHOLI MSAGHA
JUDGE