



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAKURU**

**Criminal Appeal 30, 31 & 32 of 2011, 418, 419 & 422 OF 2011 & 419, 349 & 350 OF 2010**

**RICHARD LENGURO RAMACHA.....1<sup>ST</sup> APPELLANT**

**LONKIYIA LELIKAT.....2<sup>ND</sup> APPELLANT**

**JACOB LELEMEUWA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Before us is an application brought by the appellants for consolidation of CRA 30, 31 & 32 OF 2011, CRA 418, 419 & 422 of 2010, CRA 419, 349 & 350 of 2010 which arise from Criminal Cases Nos. 61/09, 66/09, 68/09, 69/09 of Maralal, Senior Resident Magistrate's Court.

The appellants were charged with the following cases before the Maralal Court.

1. In CRC 61 of 2009, **Republic V Richard Lenguro & 2 others**. They were charged with two (2) counts of robbery with violence contrary **Section 296(2)** of the **Penal Code**, while the 3<sup>rd</sup> and 4<sup>th</sup> counts were possession of firearm and ammunition contrary to **Section 89(1)** of the **Penal Code**, respectively. The offence of robbery with violence was allegedly committed on 20/2/2009. The appellants were convicted and as a result they have filed the following appeals:-

(1) CRA 349/2010, Richard Lenguro Ramacha v. Rep.;

(2) CRA 350/2010, Jacob Lelemeuwa v. Rep.;

(3) CRA 351/2010, Lonkiyia Lelikat v. Rep.

2. In CRC 66/2009, **Republic V. Richard Lenguro Ramacha & 2 Others**, the appellants were jointly charged with five (5) counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code** and in the alternative they faced charges of handling stolen property contrary to **Section 322(2)** of the **Penal Code**. The offences of robbery with violence were allegedly committed on 13/3/09 and the alternative charge was committed on 26/3/2009. They were convicted. As a result the appellants have filed the following appeals:-

(1) CRA 418/2010, Richard Lenguro Ramacha V. Rep;

(2) CRA 419/2010, Lonkiyia Lelikat V. Rep;

(3) CRA 422/2010, Jacob Lelemeuwa V. Rep.

3. In CRC 68/09, **Republic V. Richard Lenguro & 2 Others**, the appellants were charged with four (4) counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code** and in the alternative they were charged with handling stolen property contrary to **Section 322(2)** of the **Penal Code**. The robbery was allegedly committed on 31/1/09 whereas the alternative charge was committed on 26/3/09. They were convicted and have appealed from the decision of the magistrate as hereunder:-

(1) CRA 30/2011, Lonkiyia Lelikat V. Rep;

(2) CRA 31/2011, Jacob Lelemeuwa V. Rep;

(3) CRA 32/2011, Richard Lenguro V. Rep.

4. In CRC 69/09, **Republic v. Richard Lenguro Ramacha & Others**, the appellants were charged with two counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code** while in count 3 and 4, they were charged with the offence of possession of firearms and ammunition contrary to **Section 89(1)** of the **Penal Code** respectively. They also faced an alternative charge of handling stolen property contrary to **Section 322(2)** of the **Penal Code**. The robbery with violence offences were allegedly committed on 26/3/2009.

Mr. Kipkenei who represents all the appellants urged the court to consolidate the appeals because the cases were heard by one magistrate on different dates, that the appeals are related and for purposes of expediency, they should be consolidated.

Learned counsel for the State, Mr. Nyakundi, agreed with Mr. Kipkenei. He urged that since the offences are of similar character they should have been heard at the same time. Counsel referred the court to the case of **Ngibuini V. Rep (1987) (KLR 517)**, in which the Court of Appeal held that where offences charged are founded on the same facts or from or are part of a series of offences of the same or similar character, they ought to be charged together. The law governing joinder of counts is found in **Section 135** of the **Criminal Procedure Code**. It reads as follows:-

“S.135.

**(1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.**

**(2) ....**

**(3) Where, before trial, or at any stage of a trial, the court is of the opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or counts of that charge or information.”**

It is apparent that in all the cases, the appellants were jointly charged with the offences of robbery with violence contrary to **Section 296 (2)** of the **Penal Code** and possession of firearms and ammunition, but the offences were committed on different dates between January and March, 2009. On 26/3/2009, some goods were recovered which connected the appellants to the robberies and they were charged with the alternative offences of handling stolen property contrary to **Section 322(2)** of the **Penal Code**. The witnesses who arrested the appellants and allegedly made a recovery on 26/3/09 are the same, though the

complainants are different. In our considered view the offences herein are of similar character with some common witnesses and it would be fair and expedient that the appeals be heard together.

However, the court raised the question of how many counts a charge sheet should contain. Mr. Kipkeni referred the court to two decisions of **Burton Mwakarehe v Rep (1965) EA 407** and **R v Ames & Carey (1938)1 ALL ER 515** but those two decisions do not address the issue at hand. They concern the question of consecutive sentences. In the case of **Ochieng v Rep (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.”**

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. It should be remembered that this being the first appellate court, we are required to consider afresh, analyze and evaluate the evidence and arrive at our own independent findings on the facts and the law. Consolidation may cause prejudice in the determination of the appeals and we hereby reject the application for consolidation. We direct that the appeals be heard separately.

**DATED and DELIVERED this 14<sup>th</sup> day of June, 2012.**

**R.P.V. WENDOH**  
**JUDGE**

**W. OUKO**  
**JUDGE**  
**PRESENT:**

Mr. Mbatia holding brief for Kipkeni for the appellants

Ms Idagwa for the State  
Kennedy – Court Clerk