

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Criminal Application 234 of 2012

ROBERT MELE KIWO APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The applicant was convicted of 12 offences. Out of these two counts related to making a document without authority contrary to Section 357 (a) of the Penal Code. There were 3 counts of uttering a false document contrary to Section 353 of the Penal Code. There were also 3 counts of personation contrary to Section 382 (1) as read with section 36 of the Penal Code. Then there were two counts of attempting to steal contrary to Section 275 as read with Section 389 of the Penal Code. Finally there was one count of stealing contrary to Section 275 of the Penal Code. After the full trial he was convicted and sentenced to 2 years imprisonment on each count and the learned trial magistrate observed that as the offences were not part of the same transaction, the sentences shall run consecutively. What that meant was that the applicant shall serve 24 years imprisonment.

Being dissatisfied with the said conviction and sentence, the applicant filed an application to have the sentences reviewed such that, the same are ordered to run concurrently instead of consecutively. When the application came up for hearing before this court, the applicant submitted that the charges were contained in the same charge sheet, the institution involved, that is, Co-operative Bank of Kenya is the same and that the purpose of imprisonment is rehabilitation. He further submitted that for the time he has spent in prison, he has been rehabilitated in the field of spiritual nourishment and has gained knowledge in first aid and entrepreneurship. He asks the court to give him a second chance to serve the community, family and country at large.

The learned counsel for the Republic Mr. Kadebe observed that whereas the charges in principle emanate from the same concept, there is diversity of the persons, dates and branches of the bank in which the offences were committed. He presented three categories relating to count 1, 2, 3 and 4 being the first, in which the applicant purported to be one Kipkoech Chirchir. The second category related to counts 5, 6, 7 and 8 where the applicant purported to be one Alfonse Mativa. In the last category comprising of counts 9, 10, 11 and 12 the applicant purported to be one Francis Ndoinyo. He then set out the dates in respect of first category which were confined to Co-operative Bank, Kariobangi Branch whereas the second category related to the Co-operative Bank, Nacico Branch. Those formed separate and distinct transactions.

The third category related to the same Bank, Upper Hill Branch forming a distinct transaction. It is the submission of the learned counsel for the Republic that the three distinct categories should carry their own sentences which should be ordered to run consecutively.

On my part, I have considered the submissions of both the applicant and the Republic on the hand other and with respect, agree with the categories set out by the learned counsel for the Republic. That is to say counts 1, 2, 3 and 4 shall form one transaction, counts 5, 6, 7 and 8 shall form the second transaction and counts 9, 10, 11, and 12 shall form the other transaction. I further agree, with respect, that these categories should be considered as separate and attract separate sentences.

The offences committed by the applicant are no doubt serious but fortunately did not succeed in achieving the intended purpose except in one transaction relating to count No. 8 where he succeed in stealing 600,000/= the property of Co-Operative Bank. Most of these offences attract a sentence of 7 years imprisonment but the applicant was sentenced to 2 years imprisonment in respect of each count upon which the conviction was entered.

Having said so, I shall maintain the sentence of 2 years imprisonment on each category set out above. That is to say the applicant shall serve 2 years imprisonment for the offences in counts 1, 2, 3 and 4 as a single category; 2 years imprisonment in respect of counts 5, 6, 7 and 8 as a single category and 2 years imprisonment in respect of counts 9, 10, 11 and 12 also as a single category. The 2 years imprisonment for each category above shall run consecutively such that the period of imprisonment shall be a total of 6 years. To that extent only, the applicant's application for review succeeds.

Orders accordingly.

Dated, signed and delivered at Nairobi this 25th day of September, 2012.

A. MBOGHOLI MSAGHA

JUDGE