REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 107 OF 2011

GEORGE NJUGUNA MUNYUA.......................................APPLICANT

VERSUS

REPUBLIC...................... ....RESPONDENT

R U L I N G

The applicant, GEORGE NJUGUNA MUNYUA, was convicted on 3 counts, namely;

(a) Making a document without authority contrary to *section 357 (a) of the Penal Code****; for which he was sentenced to a fine of KShs.50,000/-, in default of which he was to be imprisoned for 1 ½ years;***

(b) Uttering a false document contrary to *section 357 (b) of the Penal Code****; for which he was sentenced to a fine of KShs.80,000/-, in default of which he was to be imprisoned for 2 years; and***

(c) Obtaining goods by false pretences; for which he was sentenced to a fine of KShs.80,000/-, in default of which he was to serve 2 years imprisonment.

The learned trial magistrate directed that the sentences should run consecutively.

The sentences were handed down on 24th November 2010.

The applicant moved this court by a chamber summons application filed on 1st March 2011. By that application, he asked the court to review the sentences imposed, by varying the same.

He described himself as a person from a poor family, who was therefore unable to raise the fines imposed on him.

He also explained that he had been in custody for a period of time, when he was still on trial.

When called upon to respond to the application, Miss Maina, learned state counsel submitted that the sentences ought to run concurrently because the offences were committed in the same transaction.

Having perused the record of the proceedings, I note that the applicant was originally granted a cash bail of KShs.80,000/-. However, he was unable to raise that sum.

Even when the sum was reduced to KShs.50,000/-, he failed to raise the bail.

The record is not very clear whether the bail was ultimately reduced to KShs.20,000/- as the applicant had

requested. But it is clear that on the date when the learned trial magistrate delivered a ruling in which the applicant was put to his defence, the applicant was absent from court.

As a result, a warrant was issued for his arrest. That was on 19th May 2010.

It was not until 19th October 2010 that the applicant was taken to court, under arrest. He then told the court that he had gone to Southern Sudan, where the plane he was travelling in broke down. As a result, he lost everything.

As the applicant had nothing at all to show that he had been out of the country, for the period he failed to attend court, the trial court disbelieved his story. He was therefore remanded in custody between 19th October 2010 and 24th November 2010, when the court pronounced its judgment.

After he was convicted, the applicant told the trial court, during mitigation that he ought to be given a penalty that was not considerable, so that he could get back to his young family after serving the said sentence.

In her notes on sentencing, the learned trial magistrate Hon. E. Nderitu (Mrs) indicated that she had taken into account the fact that the applicant was a first offender. The trial court also took into account the mitigation, including the fact that the applicant was a first offender.

However, the court did also take into account the prevalence of the kind of offences committed by the applicant.
It was the court's considered view that the applicant had plotted to defraud, and did thereafter succeed in defrauding the complainant. For those reasons, the court expressed the view that the trend where persons reaped where they had not sown must be discouraged.

In those circumstances, has the applicant made out a case to warrant a revision of the sentences?

Pursuant to **section 364 of the Criminal Procedure Code, the High Court** shall, when exercising its revisionary powers, have authority to exercise such powers as are available to it as when it was sitting on an appeal.

In effect, the court would, inter alia, have powers to reduce or increase such sentence as had been handed down by the trial court.
The court could also alter the nature of the sentence, whether or not it had also increased or reduced the said sentence.

In other words, the application before me is, in principle, a competent one.

Pursuant to **section 357 of the Penal Code**, the offence of making a document without authority attracts a sentence of 7 years imprisonment, whilst the offence of uttering any document which had been made without authority also attracts the sentence of 7 years imprisonment.

Meanwhile, pursuant to **section 313 of the Penal Code**, the offence of obtaining goods by false pretences attracts the sentence of 3 years imprisonment.

In effect, a person who is convicted on all the 3 counts is liable to imprisonment for a term of 17 years imprisonment.

However, the applicant was only sentenced to a total of 5 ½ years imprisonment.

Therefore, there is no basis in law or in fact for finding that the sentences, whether taken separately or cumulatively, can be said to be excessive. The said sentences are all lawful.

And whereas the normal practice would be to hand down concurrent sentences for offences arising out the same actions or omissions, there is nothing to suggest that the trial court herein erred by ordering that the 3 sentences should run consecutively.

The fact that applicant had been in custody for a period of time before he was convicted cannot, in this case, work in his favour. I so find because the applicant did abscond from court for about 5 months.

He therefore has only himself to blame for having been placed in custody after he had been re-arrested.

In any event, the period was no more than one (1) month.

Having given due consideration to the application, I find that it has no merits. It is therefore dismissed.

Dated, Signed and Delivered at Nairobi this 24th day of October, 2011

...
F.A. OCHIENG
JUDGE