



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO. 202 OF 2008**

**LESIIT, J  
 BILDAD MICHENI**

**RUCHA.....**

**.....APPELLANT**

**VERSUS**

**REPUBLIC**

.....

**.....RESPONDENT**

*(From Original Conviction & Sentence of Chuka Principal Magistrate Criminal Case No. 1437 of 2005; A. N. Kimani; P.M).*

**JUDGMENT**

The appeal before me is against the sentences imposed against the appellant in three different matters, Chief Magistrate’s court No. 1436/05 now Appeal No. 178A/07, Chief Magistrate’s Court Case no. 1439/05 now Appeal; No. 2020/08. For the purposes of this appeal, all three appeals are consolidated as Appeal No. 202/08. The appellant explained that he was initially arrested and charged under a Criminal case in Meru Chief Magistrate’s Court. That eventually the case was withdrawn under S87 (a) of CPC. He claims to have been re- arrested and charged in 3 different cases arising from the same withdrawn charge. The appellant urged that all he was requesting is for the court to order that the sentences in the three files be ordered to run concurrently. He contends that he had reformed having gone through Carpentry & Joinery courses and Theological studies.

Mr. Musau learned counsel for the state did not oppose the application. Counsel submitted that all three cases wre different, that complainants were different and that the place the offences took place was also different. Counsel submitted that the state would not oppose to have the sentences interfered with in order to have them run concurrently rather than consecutive to each other. Counsel also urged the court to se4t aside the order for Police supervision as that sentence is no longer operative.

S. 354 (3) (b) of the CPC stipulates;

**“The court may then, if it considers that there is no sufficient ground for interfering, dismiss appeal.**

**(a).....**

**(b) in an appeal against the sentence, increase or reduce the sentence alter the nature of the sentence**

**Or**

**And in any case may make any amendment or any consequential or incidental order that may appear just or proper.”**

This court has power to make the alteration sought to be made in the appellant’s appeal against the sentence if the court will deem just or proper to do so.

I have considered the offences for which the appellants were charged in the three cases before the lower court. The appellant was charged with one count of Breaking to a building and stealing Contrary to Section 306 (a) of Penal Code and in the alternative to Handling Stolen property Contrary to Section 322(2) of Penal Code in 1436/05. He was convicted of the main count and sentenced to 3 years imprisonment. In 1437/05 he was charged with burglary and stealing Contrary to Section 304 (2) and 279 (b) of Penal Code and in the alternative t Handling stolen goods Contrary to Section 32(2) of P.C. He was convicted of the alternative count and sentenced to 4 years imprisonment. In 1439/05, the appellant was charged with the offence of Robbery with Violence Contrary to Section 296(2) of Penal Code, one count of grievous harm Contrary to Section 234 of Penal Code and in the alternative Count to Handling stolen goods Contrary to Section 322(2) of the Penal Code. He was convicted of the alternative count and sentenced to four years imprisonment.

The appellant’s contention is that if the three cases were tried together he was likely to have been sentenced to serve concurrent sentences in respect of the four charges he faced. Since the offences were tried separately, he lost that chance.

I have considered that the appellant has been in custody since his arrest in September 2005. He was sentenced in three cases. The first sentence being in 1436/05 in 2007, September. He has already served that sentence.

The appellant has two more sentences to serve. The 4 years sentence in 1437/05 and the four years in 1439/05.

The appellant has served a substantial portion of the sentences he faces in the cases before me. I have considered he is remorseful for the offences he committed and that he has promised that he has reformed.

The appellants appeal is allowed. The two remaining sets of sentences in 1437/05 and 1439/05 will now be served concurrent to each other. It is so ordered.

Dated 9<sup>th</sup> December 2010.

**LESIIT, J  
JUDGE**