



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

**Criminal Miscellaneous Application 141 of 2009**

**FRANCISCA KAVUU MUTUA ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**REVISION**

1. On 21/10/2008 I made a Ruling in which I declined to impose a fine in respect of the conviction of the accused person in Machakos **CM’S Court Criminal Cases Nos. 2092, 2094, and 2095 of 2005**. She had been charged and convicted in those cases of multiple counts of the offence of manslaughter.

2. In that Ruling I also declined to tamper with the prison sentence imposed but the convict through her lawyers has asked me to order that **“the sentences that ran consecutively be so ordered and directions do issue that the period to be served in whole is five (5) years and not fifteen years as the prison authorities belief (sic)”**.

3. From the Supporting Affidavit sworn on 1/10/2009, what is sought is an interpretation of the Ruling on sentence as meted out by the trial magistrate, Hon. H. Omondi. In her Ruling she stated as follows:-

**“I also take into account the period spent in custody which is close to 2 years...ideally I would have sentenced her to serve 7 years imprisonment but considering that she has been in custody for almost 2 years, I sentence her to serve 5 years on each count proved on each separate file. The sentences to run concurrently.”**

4. In my Ruling of 21/10/2008, I declined to interpret that Ruling as the convict at face value had no issue with it. She has now explained that her application for a Revision was made by paralegals who may have misled her and having taken proper legal advice, she now realizes that in fact her total sentence should be 5 years and not 15 years as the prison authorities have intimated.

5. In his letter dated 26/2/2008 seeking a revision order, M.M. O’Mirera Esq, Principal State Counsel stated as follows:-

**“In our view, the sentence that could be obtaining would be five years on each count where conviction was entered and sentences meted to run concurrently.”**

6. I had initially dismissed this view because the convict herself had taken no issue with it but having explained her predicament, I must revisit the learned magistrate’s words above.

7. She had convicted the convict on numerous proved counts but ultimately on “**each count proved**” she imposed a 5 year sentence and all sentences were to run concurrently on each separate file. This means that the convict and the learned State Counsel are quite right in their interpretation because the simple formulae used was each count = 5 years and all the sentences to run concurrently = 5 years in total.

8. Although there were three separate files, the whole trial was conducted within CM’S Court Criminal Case Number 2092/2005 and all the counts were proved in that file and the cumulative sentence was still 5 years.

9. In the end, I will direct that the convict shall serve 5 years sentence from 5/3/2007 until the end of that period. I say this only because that is what the trial magistrate ordered and my own views on the propriety of that sentence have not been sought. Many lives were lost in this matter and that is all I have to say.

10. Let this Ruling be extracted and served on the Officer-in-Charge Machakos Women’s Prison to comply with.

11. Orders accordingly.

Dated and delivered at Machakos this **13<sup>th</sup>** day of **October** 2009.

ISAAC LENAOLA

JUDGE