



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 642 of 2003

(From original conviction and sentence in Criminal Case No.30 of 2003 of the Chief Magistrate's Court at Kibera –Mr. Omosa, R. M.)

PATRICK MBAKA LITOLI.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

When this Appeal came before me for hearing, the Appellant intimated that he would only pursue the Appeal on sentence. In other words the Appellant abandoned his Appeal on conviction. I allowed the Appellant's Application and accordingly the Appeal proceeded only on sentence.

In support of his Appeal on sentence, the Appellant submitted that all he required was an order that the sentences imposed be ordered to run concurrently instead of consecutively as ordered by the Learned Magistrate. Mr. Ikol, Learned State Counsel, supported the Appellant's sentiments. Counsel submitted that the trial Court should have ordered that the sentences run concurrently as the offences were committed in the same transaction.

The Appellant was tried on one count of breaking in a building and committing a felony contrary to Section 306 (a) of the Penal Code, three counts of Burglary contrary to Section 304 (2) and stealing contrary to Section 279 (b) of the Penal Code and one count of being in possession of Government Stores contrary to Section 59 (1) of the Penal Code. Counts 1, 2, 3, and 4 had alternative counts of handling stolen goods contrary to section 322 (2) of the Penal Code. After a full trial, the Appellant was acquitted of the main counts but convicted on the alternative counts. He as then sentenced to serve 2 years imprisonment on each of the alternative counts. The sentences were ordered to run consecutively. It is this order that has offended the Appellant.

It is trite law that offences which are committed in the same transaction should attract a concurrent rather than consecutive sentence. In the instant case, the alternative counts were committed in the same transaction. They were all committed on the 26th December, 2002. This is when the Appellant's house was raided and an assortment of various items belonging to the Complainants in the main counts recovered. The facts regarding the alternative counts were the same. The Complainants were the same. The offences were committed at the same *locus in quo* and were investigated by the same Police Station and were handled by the same Court. These being the case, the Court upon convicting and sentencing the

Appellant ought to have ordered the sentence to run concurrently instead of consecutively. To that limited extent, the Appeal on sentence succeeds. In the end the order of this Court on this Appeal in the following terms:-

(i). The Appellant shall serve 2 years imprisonment each on the 4 alternative counts of handling stolen goods contrary to Section 322 (2) of the Penal Code.

(ii). The sentences shall run concurrently.

Dated at Nairobi this 28th day of February, 2007.

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MAKHANDIA

JUDGE

Judgment read, signed and delivered in the presence of:-

Appellant

Mr. Ikol for State

Erick Court clerk

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MAKHANDIA

JUD