

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 130 of 2004

STEPHEN MURIUKI MACHARIA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from the original Judgment and Conviction in Senior Resident Magistrate's Court at Karatina in Criminal Case No. 982 of 2003 dated 13th February 2004 by Mr. J. N. Nyaga – S.R.M. – Karatina)

J U D G M E N T

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 on sentence only.

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.

Mr. Orinda, learned Principal 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 two counts of stealing stock contrary to section 278 of the Penal Code. He also faced an alternative count of Handling stolen goods contrary to section 322(2) of the Penal Code. After a full trial, the Appellant was convicted on the two main counts and sentenced to serve three (3) years imprisonment on each of the two counts. The learned magistrate remained silent on whether the sentences would run concurrently or consecutively meaning therefore that sentences would 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 offences were committed in the same transaction. The evidence regarding the counts was 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 therefore, the Appeal on sentence succeeds. In the end the order of this court on this appeal will be as follows:-

- 1. The Appellant shall serve 3 years imprisonment on each of the two counts.**
- 2. The sentences shall run concurrently and not consecutively.**

Dated at Nyeri this 21st day of May 2007.

M. S. A. MAKHANDIA

JUDGE