



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Crim Appli 453 of 2006**

*(Application for consolidation of cases being heard in various courts in Nairobi)*

**SAMWEL GATHOGO (Alias) KANYOTE.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

The Applicant has by Chamber Summons dated 25<sup>th</sup> August 2006 sought four prayers. He sought to have five criminal cases against him being heard in various courts within Nairobi Law Courts consolidated. He also prayed for a stay of all the cases pending the determination of this Application. He also sought an order for his release on bond and further asked that an order be issued by this court setting aside all orders and or proceedings that may have been commenced in the said cases.

The Applicant cited three grounds for this application.

- (i) That all offences charged in five cases were founded on the same facts and formed part of a series of offences of similar character.
- (ii) That all cases were investigated by Special Crime Prevention unit based in Nairobi.
- (iii) That separate trials will prejudice him as he will not be able to afford five separate bonds and to hire five separate advocates for each case.

The Applicant annexed copies of the charge sheets as “SKG1”. There are five charge sheets for six cases as follows; In 1076/06 where the Applicant faces the offence of **stealing of motor vehicle** contrary to **Section 278 (A)** of the Penal Code, on the night of 3<sup>rd</sup> and 4<sup>th</sup> December 2005 at Komarock, together with two other counts. In 1079/06 he faces the charge of **STEALING OF A MOTOR VEHICLE** contrary to **Section 278 (A)** of the Penal Code, on the night of 14<sup>th</sup> and 15<sup>th</sup> February 2006 at Komarock Phase III, together with five other counts. In 1078/06 he faces the charge of **STEALING OF A MOTOR VEHICLE** contrary to **Section 278 (A)** of the **Penal Code**, on night of 1<sup>st</sup> and 2<sup>nd</sup> November 2005 at Ngumba Estate in Karasani. In 1075/06 he faces the charge of **ROBBERY WITH VIOLENCE** contrary to **Section 296(2)** of the **Penal Code** on the night of 6<sup>th</sup> December 2005 along Ngara Road in Nairobi together with two other counts. In 1351/06 he faces the charge of **STEALING OF A MOTOR VEHICLE** contrary to **Section 278(A)** of the **Penal Code** on the night of 29<sup>th</sup> and 30<sup>th</sup> May 2006 at Madaraka Estate Nairobi. In **1077/06** he faces the charge of stealing of a motor vehicle contrary to **Section 278(A)** of the **Penal Code** on 26<sup>th</sup> October 2005 at Madaraka Estate in Langata together with two

other counts.

**Mrs. Gakobo** for the State opposed the application. Counsel submitted that this was not a proper case for consolidation of charges. Counsel submitted that under **Section 135** of the **Penal Code** charges can be consolidated if they are founded on the same charge or form or are part of offences of same or similar character. Learned counsel submitted that the cases cited by the Applicant do not satisfy the provisions of that section. Counsel submitted further that the Applicant may be embarrassed in his defence if the cases were consolidated. Counsel further submitted that the offences were committed at different places and the witnesses were not the same.

**Section 135** of the **Criminal Procedure Code** deals with joinder of counts in a charge or information and provides for trial of certain offences in the same charge if they are founded on the same facts or form or are part of a series of offences of the same or a similar character. Generally, it is undesirable to join many offences in one trial as this may prejudice the accused person in his defence or cause him embarrassment.

The Applicant has argued that the offences were similar and that the witnesses were also similar and that the investigator was one. While this court may not comment on the investigator beyond noting that each charge sheet is stamped by a different police station suggesting that different investigators are involved, it is quite clear that the only thing similar between all these charges are the nature of the offences charged. They all involve theft of motor vehicles and the handling of those vehicles. The offences are totally different. They occurred in different places and on varied dates. They cannot possibly be considered as similar offences and neither do they form the same facts or the same offences of similar character. In at least one of them the charge is **ROBBERY WITH VIOLENCE** contrary **Section 296 (2)** of the **Penal Code**. In the rest, the offences were committed at different dates including different years and in different places. It would only serve to prejudice the Applicant to order a joinder of these charges into one charge. In the first place the offences will total to 17 counts. It is undesirable to join 17 counts of serious offences committed at very different places and involving different exhibits in the same charge. The Applicant will not only suffer prejudice but is likely to be embarrassed in his defence.

As for the Applicant's claims that he cannot raise sureties for each file. That does not arise in the circumstances of these cases given that one of the offences is not bailable. The prayers sought in this application cannot be granted as they are not suitable to the cases cited by the Applicant and neither are they appropriate orders to make in the circumstances of this case.

The application is therefore dismissed in its totality.

Dated at Nairobi this 11<sup>th</sup> day of October 2006.

**LESIT, J.**

**JUDGE**

**Ruling read in presence of:**

Applicant present

Mrs. Gakobo for State

CC: Wambui

**LESIT, J.**

**JUDGE**