REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL 27 OF 2005

(From original conviction and sentence in Criminal Case No. 2304 of 2003

of the chief magistrate's court at Nakuru – G. A. NDEDA)

LILIAN WANGUI KIMANI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged in seven different counts of stealing by clerk contrary to Section 281 of the Penal Code, making a document without authority contrary to Section 357(a) of the Penal Code, forgery contrary to Section 349 of the Penal Code and obtaining by false pretences contrary to Section 313 of the Penal Code.

She pleaded guilty to all the counts and was convicted on her own plea of guilty. She was sentenced to serve 2 years imprisonment on count one and on the other six, 18 months imprisonment on each count but the sentences in the last six counts were to run consecutively but to be concurrent with that in count one. That in effect meant that she was to serve ten (10) years imprisonment.

The appellant was aggrieved by the conviction and sentence and appealed against both. In ground one of her appeal, she argued that the plea was unequivocal and in ground two she argued that the sentence was excessive.

I have looked at the proceedings of the lower court and there is nothing to indicate that the plea of guilty was not unequivocal. The appellant is a well educated lady who was working as a loan officer and she clearly understood the charges that were read out to her in English language on the morning of 30/10/2003. In the afternoon of the same day, the appellant confirmed her earlier plea of guilty and when the facts of the case were read out to her, she readily admitted the same. In my view therefore, she was properly convicted and if there was any slight variation between the charges and the facts of the case, they were of no consequence in light of her express plea of guilty. The appeal against conviction must therefore fail.

With regard to the appeal against sentence, the general rule is that an appellate court should not interfere with the discretion which a trial court exercised unless it is shown that it overlooked some material factor or took into account some immaterial factors or acted on a wrong principle or where the sentence is manifestly excessive; see **WANJEMA VS REPUBLIC** [1971] E.A. 493.

The appellant was a first offender and she pleaded guilty to the charges and was remorseful.

Except for the offence in count one which involved stealing of Kshs.440,000/- on diverse days, the other offences recorded in counts two to seven were committed on one day, 17th July, 2002. There was therefore no good reason why the sentences were to run consecutively, considering that the offences therein were committed within the same transaction and should have been ordered to run concurrently with the sentence in the first count. I will therefore vary the sentence imposed by the trial court in counts 2, 3, 4, 5, 6 and 7 and order that the imprisonment term will be 18 months for each to run concurrent with the two years

imprisonment handed down in count one.

The effect of that variation is that the appellant will serve a jail term of two years with effect from 30/10/2003 when she was convicted. It is so ordered.

DATED, SIGNED & DELIVERED at Nakuru this 2nd day of June, 2005.

D. MUSINGA

JUDGE

2/6/2006