



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO.37 OF 2001**

**(From original conviction and sentence in Criminal  
Case No.1474/97 of the Chief Magistrate's Court  
at NAKURU – H. M. BOMETT (P.M.)**

**VINCENT ODUOR ODOK.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant VINCENT ODUOR ODOK has appealed against the sentence of Nakuru Principal Magistrate in Criminal Case No.1474 of 1997. When the Appellant together with his co-accused were first taken to the court he pleaded not guilty to the charge. That was 1st September, 1997. On the 11th February, 1998, the Appellant informed the court that he wished to change his plea on the charge of Attempted Robbery and Handling Stolen Gun. It was not until 24th February, 1998, that the facts were read to the Appellant and he was sentenced to 3 years Imprisonment in Count 2 and 6 years imprisonment on Count 3. After the case was heard, the Learned Trial Magistrate found the Appellant guilty of Count IV which was a charge of Handling one Stolen Browning Pistol. The court then sentenced him to a further two years imprisonment and ordered that the said sentence was to run consecutively to the previous sentences. No reason was given for that order.

The Learned State Counsel supports the appeal against the sentence on grounds that the Appellant having served 5 years and one month has served enough.

I do agree with the Appellant's Petition and grounds of appeal number six that the sentence was harsh. There was nothing wrong in ordering a sentence to run consecutively with another term. However, the court must always act judiciously in the exercise of its discretion.

It should not appear to be arbitrary or punitive. By sentencing the Appellant in Counts 2 and 3 to a term of imprisonment and ordering that the said terms run concurrently. Then in same case in a separate Count ordering that the latter term of imprisonment should run consecutively to the former, was arbitrary. No reasons were given to support the exercise of discretion to order for consecutive sentence.

The court was being harsh. Had it given a reason for that this court would not interfere with the exercise of its discretion.

In the circumstances, I will alter the sentence by ordering that all the jail terms passed against the Appellant should run concurrently with each other.

The Appellant's appeal against sentence succeeds to that extent.

Orders accordingly.

**Dated and delivered at Nakuru this 6th day of March, 2003.**

**JESSIE LESIIT**

**JUDGE**