



REPUBLIC OF KENYA



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**Rono v Republic (Criminal Appeal E018 of 2023)
[2025] KEHC 5743 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL APPEAL E018 OF 2023
JRA WANANDA, J
MAY 9, 2025**

BETWEEN

ALICE JEBET RONO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal against the Judgment delivered on 7/11/2023 by Hon. V. Karanja, Principal Magistrate, in Iten Senior Principal Magistrates' Court Case No. E139 of 2023)

JUDGMENT

1. The Appellant was charged in the above criminal case with the offence of obtaining credit contrary to Section 316(a) of the *Penal Code*. The particulars of the offence were that on 07/07/2021 at Kapsisi market location in Keiyo North sub-County within Elgeyo Marakwet North County, she, in incurring a debt to one Mark Lagat Kiptoo Kwambai, obtained credit to the amount of Kshs 1,160,000/- from the said Mark Lagat Kiptoo Kwambai by falsely pretending that she was in a position of purchasing 503 bags of maize.
2. The Appellant also faced second count of issuing a bad cheque contrary to Section 316(1)(a) of the *Penal Code*. The particulars were that on 04/08/2021 at Eldoret Town, within Uasin Gishu County, she issued a bad cheque No. 0000018 for Kshs 829,521/- in favour of the said Mark Lagat Kiptoo Kwambai on Alice Jeptoo Rono SBM Bank Limited Eldoret Branch Account No. 0102020002167 with knowledge that the said account had insufficient funds.
3. The 3rd count faced by the Appellant was also in respect to the offence of of issuing a bad cheque contrary to Section 316(1)(a) of the *Penal Code*. The particulars were that on the same 04/08/2021 at Eldoret Town, within Uasin Gishu County, she issued a second bad cheque No. 0000019 for Kshs 829,521/- in favour of the said Mark Lagat Kiptoo Kwambai on Alice Jeptoo Rono SBM Bank Limited



Eldoret Branch Account No. 0102020002167 with knowledge that the said account had insufficient funds.

4. The Appellant initially pleaded not guilty to the charges but on 07/11/2023, she asked to change her plea. The charges were then read out to her and she pleaded guilty. The facts of the case and the charges were then read out to her and she confirmed that they also were correct. She was then given an opportunity to mitigate which she did, and thereafter, on count I, the trial Court sentenced her to pay a fine of Kshs 1,000,000/- and in default, to serve 3 years imprisonment. On count II, she was sentenced to pay a fine of Kshs 200,000/- and in default, to serve 3 years imprisonment, and on count III, also a fine of Kshs 200,000/- and in default, 3 years imprisonment. The sentences were ordered to run consecutively.
5. Aggrieved with the sentence, the Appellant instituted this Appeal by way of the undated Petition filed on 15/11/2023. The grounds listed are that the Appellant pleaded guilty, is a 1st offender and is remorseful. She prayed that the sentences be ordered to run concurrently and also, that she had spent a period of 9 months in remand custody which should be factored in the sentence. She also added that she has been unable to pay the fine since by reason of being in jail, she has not managed to farm her land which is her source of income, that a non-custodial sentence should be considered as her husband is sickly and depends on her, and that she has 2 students who are required to be joining university. She then stated that if given the opportunity, she will be a law-abiding citizen and shun away from criminal activities.
6. Both parties filed written Submissions. However, the Appellant's Submissions dated 5/03/2024 is in respect to an Application for bail pending appeal which has now been determined. However, upon perusing the same, I note that some aspects thereof may also address the Appeal. I shall, in the circumstances, take the same into consideration.
7. In the Submissions, the Appellant cited the provisions of Section 348 of the Criminal Procedure Code (CPC) and urged that the trial Court erred in imposing a prison sentence of 3 years as the same exceeded what is provided by law. She also cited Section 316A of the Penal Code and also the case of Sayeka v Republic [1989] KLR (306) in respect to this Court's jurisdiction to interfere with a sentence. She reiterated her prayer that the Court do take into account the time she spent in custody in accordance with the provisions of Section 333(2) of the CPC.
8. On his part, Prosecution Counsel Mr. Kirui appearing for the State, submitted that since the conviction and sentence arises from a plea of guilt, Section 348 of the Criminal Procedure Code bars an appeal except on the extent and legality of sentence. He cited the case of Olel v Republic [1989] KLR 444. On the legality of the sentence, he set out the provisions of the Penal Code whereof the Appellant was charged and submitted that each of the counts attracted a maximum sentence of 1 year but however, the Court sentenced the Appellant to 3 years in each of the counts. He cited Section 362 of the CPC and urged that in situations where the sentence imposed is not in accordance with the law, the High Court may enhance the sentence or reverse the same other than an order of acquittal. He also cited Section 364(2) of the CPC.
9. In regard to the sentence, Counsel pointed out that the Penal Code clearly provides that the offences that the Appellant was charged with attract a maximum prison sentence of 1 year each and that therefore, the trial Court imposed an illegal sentence. He further pointed out that the trial Court ordered that the sentences do run consecutively and that therefore, the cumulative sentence would be 9 years imprisonment. He cited Section 14 of the CPC, the case of Peter Mbugua Kabui v Republic [2016] eKLR, the case of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97 and also Paragraph 7.13 of the Sentencing Policy Guidelines. Counsel further cited the case of Republic-v Saidi Nsabuga s/o



Juma & Another [19411 EACA, the case of Nathan v Republic [19651 EA 777 and also a scholarly text, namely, D. A. Thomas (Haremann 2nd Edition [1979] page 53. He then urged that in the instant case, the Appellant committed the 1st count of offence and in a bid to right it, committed the 2nd and 3rd counts of offences, the 3 offences were therefore committed with the same intent, in continuation of the same action and purpose and constitutes one transaction, that the offences ought to attract a concurrent sentence and further, that the trial Court was at fault in ordering the sentences to run consecutively. He submitted that the Appeal is merited and thus urged the Court to exercise its powers under Section 362 of the CPC and correct the sentences imposed, in accordance with the Section 316 of the Penal Code.

Determination

10. It is evident that this Appeal is only against the sentence imposed by the trial Court. The issue for determination is therefore, “whether this Court should review the sentence imposed against the Appellant by the trial Court”.
11. Regarding interference with sentence at the appellate stage, the applicable principles were restated by the Court of Appeal in the case of Bernard Kimani Gacheru v Republic [2002] eKLR, as follows:

“It is now settled law, following several authorities by this Court and the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate Court feels that the sentence is heavy and that the appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already stated is shown to exist”.

12. Although the State has conceded to the Appeal herein, this Court still has the obligation to consider whether the reasons given for conceding are justifiable (see the Court of Appeal cases of Mwanguo Gwede Mwarua v Republic [2015] eKLR, and Norman Ambich Miero & Another v Republic [2012] eKLR).
13. In this case, the offence of obtaining credit by false presence in respect to which the Appellant was charged in Count I is created under Section 316A of the Penal Code and which also provides for the sentence thereon. The provision is premised as follows:

“316. Obtaining credit, etc., by false pretences

Any person who—

- a. in incurring any debt or liability, obtains credit by any false pretence or by means of any other fraud; or
- (b) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or
- (c) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property, after or within two months before the date of any unsatisfied judgment or order for payment



of money obtained against him, is guilty of a misdemeanour and is liable to imprisonment for one year."

14. In respect to charges in Count II and III respectively, namely, issuing of bad cheques, the offence is created under Section 316A of the Penal Code premised as follows:

"316A. Bad cheque

1. Any person who draws or issues a cheque on an account is guilty of a misdemeanour if the person—
 - b. knows that the account has insufficient funds;
 - c. knows that the account has been closed; or
 - d. has previously instructed the bank or other institution at which the account is held not to honour the cheque.
2.
3.
4. A person who is guilty of a misdemeanour under this section is liable to a fine not exceeding fifty thousand shillings, or to imprisonment for term not exceeding one year, or to both"

15. Each of the 3 counts therefore attracted a maximum prison sentence of 1 year respectively. However, as aforesaid, in this case, on Count I, the trial Court sentenced the Appellant to a fine of Kshs 1,000,000/- and in default, a prison sentence of 3 years. On Count II and III, which were both in respect to the offence of issuing bad cheque, respectively, the trial Court sentenced the Appellant to a fine of Kshs 200,000/- for each count, and in default, 3 years imprisonment for each. In light of the provisions quoted above, there is no question that all the 3 sentences were illegal as they each exceeded the statutory maximum limits.

16. Next is the issue whether the trial Court was right to order that the sentences run consecutively, and not concurrently. In regard to this issue, Section 14(1) of the Criminal Procedure Code, provides as follows:

"Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

17. In *Peter Mbugua Kabui v Republic* [2016] eKLR, the Court of Appeal stated that:

"As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.



18. Further, Paragraph 7.13 of the Sentencing Policy Guidelines provides as follows:

“Where the offence emanates from a single transaction the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims the sentences should run consecutively”.

19. The Court of Appeal, further in the case of *William Kimani Ndichu v. Republic* [2015] eKLR held as follows:

“The appellant’s complaint is not that the sentence was harsh or excessive if looked at on the basis of each count. His grievance is that the sentences would have been concurrent instead of consecutive so that he would end up serving 20 years imprisonment instead of a total of 38 years.

It is now trite law that in cases where a person has been charged with and convicted of two or more counts involving the same transaction in a charge sheet or information or a trial, the practice is to direct that the sentences should run concurrently: see *R v Fulabhai Jethabhai & Another* [1946] 13 EACA 179. See *Ng’ang’a v. Republic* [1981] KLR 530 decision by Travelyan and Sachdeva Ag. J, and the case of *Ondiek v Republic* [1981] KLR 430, Simpson J and Kneller J; where the Judges were unanimous on the position that the practice is that if a person commits more than one offence at the same time in the same transaction save in exceptional circumstances the sentences imposed should run concurrently.

The former Court of Appeal has defined the phrase “same transaction” in *Rex v Saidi Nsabuga s/o Juma and another* [1941] 8 EACA 81 and revisited it again in *Nathani v R* [1965] EA 777, where the court said that the proper construction of the phrase “same transaction” is that:-

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose or by the relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

.....

For us to be in a position to interfere with the sentences herein, we have to be satisfied that all the three offences the appellant was convicted for were so inter-related; that they formed a single transaction.”

20. Applying the above principles to the facts of this case, I am satisfied that the trial Court also erred in ordering that the sentences imposed herein for all the 3 counts do run consecutively. It was urged that the Appellant, after committing the 1st count of offence, and in a bid to make amends “replaced” the first cheque by issuing two fresh respective cheques which however, again, were dishonoured, thus committing the 2nd and 3rd counts of offences.

21. In view of the foregoing, it is clear that all the 3 offences were therefore related as they were all committed with the same intent, and in continuation of the same action and purpose. The offences were also perpetrated against the same complainant by the same person. They were therefore evidently committed under the same transaction. The sentences ought to have attracted a concurrent sentence.



22. For the above reasons of imposing sentences that were in excess of the statutory maximum limits, and of ordering that the sentences run consecutively, instead of concurrently, I find that the trial Court acted upon wrong principles when sentencing the Appellant and this Court will therefore interfere thereon.
23. I note that the Appellant was sentenced on 7/11/2023 and had been in jail until I released her on free bond on 3/12/2024 pending Appeal. She had therefore already served slightly more than 1 year in prison before I released her on bond pending appeal as aforesaid. Before that, in the lower Court, the Appellant was arraigned on 6/02/2023 and the case was concluded on 7/11/2023 when the sentence was read out. The trial before the Magistrate's Court therefore took about 9 months. The record reflects that she was denied bond and therefore remained in custody throughout the 9 months. Cumulatively, therefore, the Appellant had been in custody for about 1 year and 9 months in aggregate, before I released on free bond pending Appeal.
24. Regarding the time spent in remand custody during the pendency of a trial, Section 333(2) of the [Criminal Procedure Code](#) provides as follows:
- “Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.
- Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
25. The Judiciary Sentencing Policy Guidelines (2014) also provides as follows:
- “The proviso to section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
26. In reiterating the above requirement, the Court of Appeal in the case of Bethwel Wilson Kibor v. Republic [2009] eKLR, stated as follows:
- “By proviso to section 333(2) of [Criminal Procedure Code](#), where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.
27. The proviso to Section 333(2) above is couched in mandatory terms and must therefore be applied. In this case, the trial Magistrate did not mention whether she took into account the period that the Appellant spent in remand custody when reading out the sentence.

Final Orders

28. For the foregoing reasons, I find that the Appellant has fully served the maximum prison sentence that is contemplated by law for the offences committed. Consequently, she is now hereby set free.



DELIVERED, DATED AND SIGNED AT ITEN THIS 9TH DAY OF MAY 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Appellant present

Ms. Mwangi for the State

Court Assistant: Edwin Lotieng

