



**Mwangi v Republic (Criminal Revision 48 of 2024)
[2024] KEHC 4346 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 48 OF 2024
DR KAVEDZA, J
APRIL 16, 2024**

BETWEEN

JEDIDA MUGURE MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted for the offences hereunder involving multiple victims.
2. Obtaining money by false pretences contrary to section 313 of the *Penal Code*; Personation contrary to section 382 as read with section 36 of the *penal code*; forgery of land transfer document contrary to section 350 (2) as read with section 349 of the *penal code*; and uttering a false document contrary to section 353 as read with section 349 of the *penal code*.
3. She was sentenced to a cumulative of 9 years imprisonment. Consequently, she filed the application herein seeking sentence reduction and/or a non-custodial sentence.
4. In her oral submissions, she prayed that the sentences should run concurrently. Mr. Mutuma for the state opposed the application, arguing that since the offences were committed on diverse dates, the learned magistrate properly imposed a consecutive sentence.

Analysis and determination.

5. I have gone through the undated notice of motion application filed on 13/02/2024 and find that the applicant did not plead for a concurrent sentence, but rather, pleaded for a sentence reduction.
6. Nevertheless, in her oral submissions, she has pleaded with the court to review the consecutive sentence and substitute the same with a concurrent sentence.



7. The Court of Appeal, in *Bernard Kimani Gacheru vs. Republic [2002]* e-KLR stated that:
- “It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, 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 some wrong material, or acted on a 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 states is shown to exist.”
8. From the holding of the above case, it is my view that the trial court considered the circumstances of the applicant’s case and imposed an appropriate sentence. I am not therefore convinced that the applicant should benefit from a sentence reduction and/or a non-custodial sentence.
9. On whether the sentences should run consecutively, section 14 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides as follows:
- (1) 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.
10. In *Peter Mbugua Kabui vs Republic [2016]* eKLR the Court of Appeal stated as follows:
- “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.
11. I have similarly considered the Sentencing Policy Guidelines, which contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide as follows:
- 7.13 Where the offences emanate 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 sentence should run consecutively.
- 7.14 The discretion to impose concurrent or consecutive sentences lies in the court.
12. The holding in *Peter Mbugua Kabui vs Republic* and the principles espoused in the sentence policy guidelines (supra) apply to the facts of this case, that is to say that the applicant committed various offenses in multiple transactions, on diverse dates, against multiple victims.
13. In this case, the trial court therefore correctly imposed a consecutive sentence.
14. The upshot of the above analysis is that the application for revision of the sentence consequently fails. It is so ordered.



RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF APRIL 2024

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mutuma for the Respondent

Applicant present on the platform

Nelson C/A

