



REPUBLIC OF KENYA



**Kasee & another v Republic (Criminal Revision E094 & E132 of 2022
(Consolidated)) [2023] KEHC 2503 (KLR) (Crim) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E094 & E132 OF 2022 (CONSOLIDATED)
JM BWONWONG'A, J
MARCH 16, 2023**

BETWEEN

RICHARD GATURO KASEE 1ST APPLICANT

JEDIDAH MUGURE MWANGI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application of revision of the sentence delivered by Hon. E. Boke, S.P.M,
on 14th April 2022 in Kibera Chief Magistrate's Court Criminal Case No.
292 of 2016 Republic vs Jedidah Mugure Mwangi and Richard Gaturo Kasee)*

RULING

1. The 1st applicant was convicted of two counts for the offences of obtaining money by false pretences contrary to section 313 of the *Penal Code* (Cap 63) Laws of Kenya.
2. He was sentenced to serve 2 years and 10 months in respect of each count. The sentences were to run consecutively.
3. The 2nd applicant was convicted on eight counts of charges related to personation, giving false information, making a document without authority, forgery of land transfer and obtaining by false document.
4. She was sentenced as follows.

She 2nd applicant was sentenced to a fine of Kshs 200,000 in count 1, in respect of person contrary to section 382 of the *Penal Code*.



Kshs. 200,000 in respect of giving false information to a person employed in the public service contrary to section 129 (a) of the Penal Code in count II.

Kshs 400,000 in respect of making a document without authority contrary to section 357 (a) in count III.

Kshs 400,000 in respect of forgery of land transfer document contrary to section 350 (2) as read with section 349 of the Penal Code in count IV.

Kshs 300,000 in respect of uttering a false document contrary to section 353 as read with section 349 of the Penal Code in count V.

Kshs 300,000 in respect of uttering a false document contrary to section 353 as read with section 349 of the Penal Code in count VI.

Kshs 400,000 in respect of obtaining money by false pretences contrary to section 313 of the Penal Code in count VIII.

Kshs 400,000 in respect of obtaining money by false pretences contrary to section 313 of the Penal Code in count IX.

5. And in all the counts in default she was to serve 1-year imprisonment in each count.
6. They approached this court seeking revision of their sentences.
7. The applicants relied on the following grounds. The applicants are first offenders. The charges against them originated from a single transaction. The trial court failed to consider the time spent in pre-trial custody. They urged the court to grant non-custodial sentences.
8. They also urged the court to order the sentences to run concurrently.
9. That they are husband and wife and their children have no one to look after them.

The applicant's oral submissions

10. The applicants submitted that the trial court failed to consider the provisions of section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
11. They urged the court to order the sentences to run concurrently.

The respondent's written submissions.

12. Mr Mutuma, Senior Prosecution Counsel, submitted that the counts are distinct as they appear in the particulars of the charge sheet. That the court was right to order sentence to run consecutively. He conceded that he had no objection for the prayer for time spent in pre-trial custody to be considered.
13. He urged the court to dismiss the applications.

Issues for determination

14. Having considered the application, the submissions and the applicable law, I find that the issue for determination is whether the applicants have made out a case for the grant of the orders sought.



Analysis and determination

15. The power of this court in its revisionary jurisdiction is founded under section 362 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

16. Article 165 (6) of the [Constitution](#) of Kenya provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

17. On the merits of the application, the 1st applicant sought a review of the sentence of the lower court which sentenced him to serve a cumulative sentence of 5 years and 8 months imprisonment. The argument is that the court did not consider the provisions of section 333 (2) of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya. He has submitted that he spent time in pre-trial custody which was not considered by the trial court.

18. Section 333 (2) of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya provides that:

(2) Subject to the provisions of section 38 of the [Penal Code](#) (Cap. 63) 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.

19. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

20. I have perused the record of the proceedings in the lower court. I find that the 1st applicant was arrested on February 19, 2016 and was granted bail/bond. His bail was cancelled on March 29, 2021. He was re-arrested on July 14, 2021 and was in custody until his conviction and being sentenced on April 14, 2022. He therefore spent 1 year and 3 months.

21. The trial court did not indicate whether the pre-trial remand custody period was considered before being sentenced. I find that the trial court failed to take the period of 1 year and 3 months into consideration before sentencing the applicant

22. The second issue that is applicable to both applicants is whether the sentences should be run concurrently or consecutively. The trial court directed the sentences of the 1st applicant to run consecutively and the 2nd applicant default sentence to run consecutively. 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.”

23. I find that the trial court considered the circumstances of the case and meted out the appropriate sentence. The sentence imposed was therefore proper in the circumstances. On whether they 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.”

24. It is therefore lawful to pass consecutive sentences in the circumstances prescribed by the said section 14.

25. In Peter Mbugua Kabui vs Republic [2016] e-KLR 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.

26. I have also 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.”

27. The trial court was satisfied in that case that the applicants committed a series of offences, and did not err in ordering consecutive terms for the counts charged and the default sentences respectively.

28. The upshot of the above analysis is that the application for revision of the sentence partially succeeds.

29. I therefore allow the application of the 1st applicant and dismiss the 2nd applicant’s application.

30. I hereby order that the cumulative sentence on the 1st applicant of 5 years and 8 months be and is hereby reduced by 1 year and 3 months. The sentence will commence from the date of conviction.

31. The application of the 2nd applicant is hereby dismissed.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF MARCH 2023.

J M BWONWONG’A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant



The appellant in person

Mr. Otieno for the respondent

