



REPUBLIC OF KENYA



**Odhek v Republic (Criminal Revision E234 of 2022)
[2023] KEHC 18118 (KLR) (Crim) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E234 OF 2022**

LN MUTENDE, J

MAY 23, 2023

BETWEEN

BONFAS OUKO ODHEK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Bonface Ouko Odhek, the applicant was charged with ten (10) offences. Charges in count numbers one (1), three (3) and four(4) were each of obtaining money by false pretence contrary to Section 313 of the Penal Code; Count number two was of making a false document contrary to Section 347(a) as read with Section 357 of the Penal Code; Count numbers five, six, seven, eight and nine were each of being in possession of documents resembling identity cards contrary to Section 14(1)(f) of the Registration of Persons Act.
2. Having been taken through full trial he was convicted and sentenced as follows:
 1. Count number One (1) – Fined Kenya Shilling Twenty Thousand (Ksh 20,000/-) and, in default to serve Six (6) months imprisonment.
 2. Count number Two (2) - Fined Kenya Shillings Fifty Thousand (Ksh 50,000) and, in default to serve One (1) year imprisonment.
 3. Count number Five (5) – Kenya Shillings one Hundred Thousand (Ksh 100,000/-) and, in default to serve One (1) year imprisonment.
 4. Count number Six (6), seven (7) eight (8) and nine (9) – Fined Kenya Shillings One Hundred Thousand (Ksh 100,000/-) and, in default to serve one (1) year imprisonment in respect each of the said counts numbers six, seven eight and nine.



5. Count number Ten (10) – Fined Kenya Shillings Ten Thousand (Ksh 10,000/-) and, in default to serve two months imprisonment.
3. Through a Notice of Motion dated August 15, 2022 the applicant seeks review of the sentence imposed so that the sentences can run concurrently.
4. The application is supported by an affidavit deposed by the applicant where he avers that if the sentences are to run consecutively he will serve a total of six (6) years and eight (8) months. That he has been involved in the prisons fellowship activities, has changed and is willing to engage in productive years in Nation building.
5. During hearing of the application the applicant reiterated what is stated on the body of the application.
6. The application is opposed by the Respondent. Through learned Prosecution Counsel, Ms. Ntabo, it is urged that the applicant was convicted of eight (8) counts. Each count having had a term, the total term was two (2) years, eight (8) months. This being the case the court was lenient. She called upon the court to maintain the same.
7. The Application is brought pursuant to Section 362, 364 of the *Criminal Procedure Code* (CPC) which gives the High Court Supervisory Jurisdiction over proceedings and orders made by the Subordinate Court. The alluded to provision of the law provides thus:-

Section 362

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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.

Section 364

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —

- (a) In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) In the case of any other order other than an order of acquittal, alter or reverse the order.

8. This court is called upon to ascertain whether the order made by the Subordinate Court was proper or correct.
9. Section 14 of the *Criminal Procedure Code* 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.



- (2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.
10. The Court of Appeal in *Peter Mbugua Kabui v Republic*, [2016] eKLR held 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”
11. The Judiciary *sentencing policy guidelines* sets out circumstances in which a court can direct sentences to run either concurrently or consecutively. At paragraph 7.13 it states that:
- “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.”
12. The guidelines also clarify that whether the sentence should run concurrently or consecutively is a matter of discretion. This being the case, the limited power of a revisionary court cannot be stretched to question the trial court’s discretion. This is an issue that ought to be taken on appeal for the court to examine the evidence and circumstances in totality.
13. Looking at the amended Chamber Summons, the applicant was convicted of offences following complaints by different complainants, hence there were multiple victims. It is not urged that the offences were committed in the same transaction and/or against the same complainant. I do not see the incorrectness in the discretion exercised by the trial court. If the applicant was aggrieved he should have proffered an appeal.
14. In the circumstances, I find the application lacking merit.
- Accordingly, it is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 23RD DAY OF MAY, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Mr. Kiragu - ODPP

Court Assistant – Mutai

