



**Sirengo v Republic (Miscellaneous Criminal Application
E018 of 2021) [2023] KEHC 20580 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2021**

WM MUSYOKA, J

JULY 21, 2023

BETWEEN

MICHAEL SIRENGO APPLICANT

AND

REPUBLIC RESPONDENT

(Revision/review of sentence arising from orders made on 12th October 2022, in Butali SPMCCRC No. 422 of 2020 (Republic vs. Kelvin Ochome Juma & Mike Sirengo) and on 16th October 2020, in Butali SPMCCRC No. 432 of 2020 (Republic vs. Michael Sirengo), both by Hon. ZJ Nyakundi, Senior Principal Magistrate, SPM)

RULING

1. On December 23, 2022, I delivered a ruling, where I called for the file in Butali SPMCCRC No 342 of 2020. File number Butali SPMCCRC No 432 of 2020 has been availed instead. It has been explained that Butali SPMCCRC No 342 of 2020 relates to a different person, and that the file involving the applicant was Butali SPMCCRC No 432 of 2020.
2. I have perused both files, that is to say Butali SPMCCRC No 422 of 2020 and Butali SPMCCRC No 432 of 2020. In Butali SPMCCRC No 422 of 2020, the applicant pleaded guilty to a charge of burglary and stealing, and was sentenced to 3 years imprisonment. In Butali SPMCCRC No 432 of 2020, he pleaded guilty to a charge of escaping from lawful custody, and was sentenced to serve 2 years imprisonment. The conviction in Butali SPMCCRC No 422 of 2020 was on 12th October 2020, and the escape from custody, the subject of Butali SPMCCRC No 432 of 2020, happened on 15th October 2020, apparently before the police could hand the applicant over to the prison authorities to serve his jail term in Butali SPMCCRC No 422 of 2020.
3. The applicant invites me to consider review of the sentences in both cases, that is to say Butali SPMCCRC No 422 of 2020 and Butali SPMCCRC No 432 of 2020. He would like the sentences



in both to run concurrently. I note, from the record, that the sentence in Butali SPMCCRC No 432 of 2020 is to run concurrently with that imposed in Butali SPMCCRC No 422 of 2020. I find that the trial court was incredibly lenient, in ordering that the 2 sentences run concurrently, rather than consecutively, for a convict who, had been convicted on 12th October 2020, and 3 days into his sentence, escaped from those who had custody of him. A stiffer sentence was warranted, which could have been achieved by having the sentence in Butali SPMCCRC No 432 of 2020 run consecutively to that in Butali SPMCCRC No 422 of 2020. Indeed, the order was wrong or improper or incorrect or irregular. The 2 offences were not of the same genus, nor committed in the same transaction, to warrant the sentences for the same to run concurrently, instead they ought to run consecutively, and the trial court ought to have made an order to that effect. See section 37 of the Penal Code, Cap 63, Laws of Kenya; section 14(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya; *Ng'ang'a vs. Republic* [1981] KLR 530 (Trevelyan & Sachdeva, JJ); and *Owiti vs. Republic* [1984] KLR 733 (Madan, Miller & Potter, JJA).

4. For avoidance of doubt, the sentencing order in Butali SPMCCRC No 432 of 2020 reads as follows:

“All factors considered accused is sentenced to 2 years imprisonment. The period of imprisonment to run concurrently with the period of imprisonment in criminal 422 of 2020.”

5. There can be no merit in the Motion, dated March 5, 2021, in favour of the applicant. The converse should be the position, that I should interfere with the order in Butali SPMCCRC No 432 of 2020, by substituting it with the right or proper order that the trial court should have made, an order that makes the sentence to run consecutively with that in Butali SPMCCRC No 422 of 2020. This is an application for revision of sentence. I shall revise the order of March 16, 2020, by substituting it with an order that the sentences in Butali SPMCCRC No 422 of 2020 and Butali SPMCCRC No 432 of 2020 shall run consecutively. The Deputy Registrar shall cause a copy of this ruling to be conveyed to the applicant, through the Kenya Prisons Service.

RULING DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 21ST DAY OF JULY, 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Michael Sirengo alias Mike Sirengo, the applicant, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

