



**Tutizere v Republic (Criminal Revision E165 of 2023)
[2023] KEHC 20022 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL REVISION E165 OF 2023**

DR KAVEDZA, J

JULY 6, 2023

BETWEEN

DIEUDONNE TUTIZERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, pleaded guilty and was convicted on five counts of the offences under section 54 (1)(a) as read with section 54(2) of the *Kenya Citizenship and Immigration Act*, 2011, laws of Kenya. He was sentenced to pay Kshs. 650, 000 on the 5 counts and in default to serve 27 months in prison. He made an application for sentence review seeking a reduction of the fine imposed.
2. Having considered the application for revision, the applicable law, the issue for determination is whether the applicant should be granted revisionary orders sought.
3. The provisions of section 362 to 364 of the *Criminal Procedure Code* (cap 75) Laws of Kenya, grants this court powers to exercise reversionary jurisdiction. The applicant was convicted on five (5) counts for offences related to making a false declaration, misleading an immigration officer, being unlawfully present in Kenya and failure to register his foreign national documents. He was sentenced to pay a fine in each of the counts in default to serve various sentences ranging from three to six months imprisonment.
4. The applicant failed to raise the fine imposed and is therefore serving the custodial sentences since the order of the court was that in default of payment of fine, the sentences shall run consecutively. Cumulatively, the custodial sentences add up to twenty-seven (27) months imprisonment. The applicant now prays to this court to review the order of the court to have the sentence imposed to run concurrently.



5. At the outset, I would like to state that the applicant is challenging judicial discretion of the trial magistrate. However, this court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances, or the trial magistrate applied the wrong principles of law, or finally, that the sentence was illegal. I have carefully gone through the proceedings and find that the sentence imposed was lawful.
6. I have considered the application of the applicant, the oral submissions of both Mr. Mutuma for the state and the applicant.
7. The record is clear that the offences the applicant was charged with were all committed in a single transaction. The State counsel has indeed conceded to this fact. In the case of *Peter Mbugua Kabui v Republic* [2016] eKLR where 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”
8. The above holding by the Court of Appeal is applicable to this case. I would accordingly set aside the consecutive sentence imposed by the trial court and substitute thereof with an order that the sentences shall run concurrently effective 16/12/2022.
9. Additionally, the Director Immigration Services is directed to deport the applicant to his country upon completion of the sentence, and, a repatriation order be filed in the lower court file.
10. The applicant is further barred from returning to this country for a period of three (3) years with effect from the date of deportation.
11. It is so ordered.

Ruling dated and delivered virtually this 6th day of JULY 2023.

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mutuma for the State

Applicant present on the Platform.

Habiba C/A

