



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION- MILIMANI COURT

CRIMINAL REVISION NO. 116 OF 2019

EDWARD SHIKUMBU ALIAS EVANS.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. **Edward Shikumbu alias Evans**, was charged and convicted for forgery, obtaining money by false pretences, uttering a false document and attempting to obtain goods. The aggregate counts were ten.
2. Having been taken through trial he was convicted, fined and in default he was required to serve four (4) months imprisonment on each count, sentences that were ordered to run consecutively.
3. Having been sentenced on the 8th day of March 2019; he approached this court by way of Chamber Summons seeking an order directing all sentences to run consecutively and to compute and take into account time spent in remand custody.
4. During hearing of the application, the applicant sought review of sentence meted out. And, urged that he was about to complete his sentence.
5. In response, Ms. Chege, learned counsel for the State urged that the Applicant failed to demonstrate any Constitutional issue that had arisen. But having indicated that he was about to complete the sentence she left it at the discretion of the court.
6. I have considered the application herein. The applicant brought the application pursuant to the provisions of **Article 50(2)** of the Constitution that requires an accused person to be granted fair hearing. This is an applicant who was heard; his case was determined, therefore he is a convicted offender as opposed to a person who is waiting to stand trial.
7. That notwithstanding, he prays for sentences imposed to run concurrently. The sentences having been ordered to run consecutively, it meant that the Applicant was required to serve sentence for one offence before starting to serve for other offences.
8. In the sentencing Policy Guidelines it is provided that:

7:14- The discretion to impose concurrent or consecutive sentences lies in the court.
9. Section 14 of the Criminal Procedure Code provides that

(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 therefor 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. (3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a

subordinate court to pass, on any person at one trial, consecutive sentences— (a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or (b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose. (4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence. [Act No. 17 of 1967, s. 46, Act No. 25 of 1971, Sch., Act No. 4 of 1974, Sch.] 15.

10. In the case of *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. It is our considered view that the exception in Section 14 (3) of the Criminal Procedure Code is inapplicable to this case in light of the provisions of Section 7 (1) of the Criminal Procedure Code. We further observe that Section 14 of the Criminal Procedure Code stipulates that for purposes of an appeal, the aggregate of consecutive sentences imposed in case of convictions for several offences at one trial, shall be deemed to be a single sentence. We take the view that given the circumstances of this case, the consecutive sentences totaling 20 years imposed on the appellant, cannot said to be excessive. In any event, as we have pointed out earlier, severity of sentence is a question of fact and this Court has no jurisdiction to consider issues of fact in a second appeal. Is the sentence illegal or unlawful” We find that the sentence was legal and lawful, and we have no legal basis for interfering with the same.”

11. The Applicant herein committed a series of offences on three (3) consecutive days, in meting out the sentences the trial court was lenient. In the circumstances the application is dismissed.

12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 7TH DAY OF OCTOBER, 2021.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Mr. Kiragu for ODPP/Respondent

Court Assistant -Mutai