



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION - MILIMANI

CRIMINAL REVISION NO. E072 OF 2021

LUCY CATHERINE MUTITU.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. **Lucy Catherine Mutitu**, the Applicant, herein has approached this court by way of Notice of Motion seeking review of sentence so that it can run concurrently. It is indicated that having pleaded guilty to three (3) counts of obtaining money by false pretences contrary to Section 313 of the Penal Code and three (3) counts of personating a public officer contrary to Section 105 (b) of the Penal Code, she was sentenced to serve 2 years imprisonment on each count of obtaining money by false pretences and a fine of Kshs. 50,000/- and in default to serve 12 months imprisonment on each count of personating a public officer, sentences that were to run consecutively.

2. The application is opposed by Mr. Kiragu, learned counsel for the State who argues that the sentences being legal, there was no reason to have the sentence reviewed.

3. In the sentencing Policy Guidelines it is provided that:

7:14 - The discretion to impose concurrent or consecutive sentences lies in the court.

4. 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.*

5. In the case of **Peter Mbugua Vs. Republic (2016) eKLR** the Court of Appeal stated that:

*“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered”*

6. Severity of sentence is a question of fact. The sentence herein has not been alleged to be either illegal or unlawful. Therefore this court has no basis to interfere with it. Consequently the application is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 4<sup>TH</sup> DAY OF OCTOBER, 2021.

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

*Mr. Kiragu – ODPP/Respondent*

*Applicant*

*Court Assistant -Mutai*