



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL REVISION NO. 14 OF 2020

(Coram: Odunga, J)

MBETHI KITHOME alias BENEDETA KATUMI MUNGUTI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein, **Mbethi Kithome**, was charged before Machakos Chief Magistrate's Court in Criminal Case No. 351 of 2016 6 Counts. In Count I she was charged with forgery the particulars being that on unknown date and place within Machakos County, jointly with other with intent to defraud forged a certain letter namely letter of allotment of agricultural plot no. 662 – Aimi ma Kilungu Limited purporting it to be a genuine allotment letter issued and signed by the management of Aimi ma Kilungu Limited.
2. In Count II she faced a similar charge of forgery, the particulars being that on the 23rd June, 2014, within Machakos County with intent to defraud forged Kenya Revenue Authority Tax Payer Registration Certificate No. A005963047B in the name of **Benedeta Katumi Munguti** purporting it to be a genuine certificate issued by the Kenya Revenue Authority.
3. In the third Count she faced the offence of forgery of an identity card the particulars being that on unknown date and place within the Republic of Kenya with intent to deceive forged a Kenya National Identity Card Number 3364067 belonging to Bene3deta Katumi Munguti by inserting a photograph so closely resembling an identity card for the said **Benedeta Katumi Munguti** so as to deceive.
4. In Count IV, she faced the offence of obtaining by false pretences in that between 28th August 2015 and 10th November, 2015 within Machakos County, jointly with others with intent to defraud **John Mua Ngada** obtained Kenya Shillings 2,440,500/- by falsely pretending that she was in a position to sell him Agricultural Plot No. 662 Aimi ma Kilungu, information she knew to be false.
5. In Count V, the applicant was charged with the offence of personation the facts being that on the 7th September, 2015 at Andrew Makundi Company Advocate's Office, in Machakos Town, with intent to defraud falsely presented herself as **Benedeta Katumi Munguti** the holder of identity card number 3364067 to the said Makundi Advocate.
6. In Count VI, she was charged with Uttering a False Document, the particulars being that on the 7th of September, 2015 at Makundi Company Advocate she knowingly uttered a forged letter of allotment for agricultural plot no. 662 Aimi ma Kilungu to **Mr Andrew Makundi** of Makundi and Company Advocate purporting it to be a genuine allotment letter issued by the management of Aimi ma Kilungu Limited.
7. Though the applicant had initially pleaded not guilty, she later on changed her plea and pleaded guilty to the same. According to the facts, on 28th August, 2015, the complainant, one **John Gada** was informed of a parcel of land by a friend called Moses. He was connected to brokers of the land in Aimi ma Kilungu who in turn connected the complainant to the seller, who is the applicant and they negotiated and had an agreement prepared at the office of Andrew Makundi Advocate. The purchase price was Kshs 2.8 million out of which Kshs 2,440,500/- was paid. However, when the Complainant went to Aimi ma Kilungu offices to seek the transfer, he was unable to get through to the applicant whose phone was off. He was however informed at Aimi ma Kilungu that the land given to him was fake and he reported the matter to Machakos Police Station. Upon the investigations being conducted, it turned out that the actual owner of the plot was **Benedeta Katumi** and not the applicant. It also turned out that the documents relied upon by the applicant were forged. The applicant was then arrested and charged.
8. In this revision, the applicant avers that she is remorseful and that since her conviction, she has undergone training and has acquired various skills. She therefore seeks that her sentence ought to be directed to run concurrently rather than consecutively.

9. In opposing the application, the Respondent cited Section 14 of the *Criminal Procedure Code* and *Judiciary Sentencing Policy Guidelines* which provides as follows:

7.13 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.

7.14 The discretion to impose concurrent or consecutive sentences lies in the court.

10. Reliance was also placed on *Peter Mbugua Kabui vs. Republic [2016] eKLR* and *Peter Mageria vs. Republic [1983] eKLR*.

11. In the instant case, it was submitted that since the applicant not only committed the various offences on diverse dates arising from different transactions but a chain of events from forgery and culminating in obtaining money from false pretences, it is not illegal for the sentences to run consecutively. According to the Respondent, the penalties imposed upon the applicant are lawful and the court did not act upon the wrong principal or overlooked the material facts placed before it. The trial court while delivering its sentence noted the exceptional circumstances in the case and therefore ordered for the sentences to run consecutively.

12. It was therefore urged that the applicant's application is unmerited and ought to be dismissed.

13. I have considered the issues raised above.

14. Section 14 of the *Criminal Procedure Code* provides for circumstances in which a court can direct sentences to run concurrently or consecutively. Section 14 provides in part as follows:-

“(1) Subject to sub-section (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.

(3) 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.

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 less or

b. of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.”

15. In the case of *Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97*, the then Court of Appeal for Eastern Africa in a judgment read by **Sir Joseph Sheridan** stated that the practice is that where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, to impose concurrent sentences. That is still good practice.

16. The Court of Appeal in *Peter Mbugua Kabui vs. Republic [2016] eKLR* expressed itself on the matter as hereunder:

“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 totalling 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.”

17. In the case of *Peter Mageria vs. Republic [1983] eKLR* the Court held that:

“It has been said many times that where different offences form part of one transaction and are committed at the same time – as was the case here – then the sentences should be made to run concurrently unless there are exceptional circumstances for not doing so.”

18. It therefore follows that concurrent sentences are only meted where an accused person commits a series of offences at the same time or in a single act/transaction. It is therefore clear that for the rule to apply, it is not mandatory that the offences be committed on the same day at the same place. What matters is that either the offence be committed in a single act or in a single transaction. A transaction may take place at different places on different days but when considered holistically, it must be seen that the acts constituting the respective counts are in fact

geared towards the achieving of a particular objective. In this case it is clear from the facts presented before the Court that notwithstanding the fact that the counts refer to different days and different time, the objective was to obtain money from the complainant by use of forged documents.

19. In my view the offences committed were intricately interconnected and were all geared towards the achievement of a particular purpose. They were in fact part of one transaction. Therefore, the Learned Trial Magistrate ought to have imposed concurrent sentences. Consequently, the sentences imposed upon the applicant in Machakos Chief Magistrate's Court in Criminal Case No. 351 of 2016 are directed to run concurrently from 22nd November, 2018.

20. It is so ordered.

Ruling read, signed and delivered in open court at Machakos this 4th day of November, 2021

G.V. ODUNGA

JUDGE

In the presence of:

The Applicant in person

Mr Ngetich for the Respondent

CA Susan