



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE -J)

CRIMINAL APPEAL NO. NO. 62 OF 2020

BETWEEN

PATRICK MUGAMBI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal against sentence in Tigania Principal Magistrate's Court Criminal Case No. 467 of 2019 by Hon. P.M.Wechuli (SRM) on 24.08.2020)

JUDGMENT

1. Accused were convicted on their own plea on one count of cutting down cultivated produce contrary to section 334 (a) of the Penal Code (*the Act*) and the second count of threatening to kill contrary to section 223(1) of the same Act.
2. Appellants was fined Kshs. 50,000/- in default 8 months' imprisonment in the first count and Kshs. 50,000/- in default one-year imprisonment.
3. Appellants appeal on sentence is opposed by the state on the ground that the sentences ought to have run concurrently.
4. Section 28 of the Penal Code gives the general principles on fines that:

(1) Where a fine is imposed under any law, then in the absence of express provisions relating to the fine in that law the following provisions shall apply—

(c) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion—

i. direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

5. Section 37 of the Act on the other hand provides that:

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

“Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph(s) of sub-section (1) of section 28 or of any part thereof”.

6. My understanding of this provision is that imprisonment terms imposed in default of payment of the fines ought to run consecutively and not concurrently.

7. Appellant was liable to imprisonment for fourteen years in the 1st count and ten years in the second count. The magistrate in his discretion imposed a lenient sentence and even gave the Appellant an option to pay fines. The sentences passed by the trial court are in my humble view reasonable and fair and do not merit this court's interference.

8. Accordingly, and for the reasons set out hereinabove, I find that this appeal has no merit and it is thus dismissed.

DATED AT MERU THIS 02ND DAY DECEMBER 2021

T. W. CHERERE

JUDGE

Court Assistant - **Mr. Kinoti**

Appellant - **Present**

For the State - **Ms. Mwaniki**