



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL DIVISION

CRIMINAL REVISION NO.112 OF 2020

(Revision of the Order of the Hon. J.Ndeng'eri SRM in Criminal Case No. 1833 of 2014 at Embu)

SUSAN MUTHONI NGARI alias BRIDGET KANINI NJERU....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. **SUSAN MUTHONI NGARI alias BRIDGET KANINI NJERU** was charged with six (6) counts; Count I, II and III were for the offence of Obtaining Money by False Pretence/s313 of the Penal Code; Counts IV, V and VI were for the offence of Making a Document without Authority c/s 357 (a) of the Penal Code;

2. A brief outline of the case was that the applicant jointly with others not before the court with intent to defraud obtained monies from **DR. BISHAR IBRAHIM ALI** by falsely pretending that they were in a position to sell him land Parcel Nos. Gaturi/Matakari/T.96, Gaturi/Matakari /T.14 and Nemburi/Gaturi/4950; a fact that she knew was not true; after a full hearing the applicant was on 10/03/2020 convicted on Counts I, II and III and was sentenced to serve a term of sixteen (16) months imprisonment on each count; the trial court ordered that the terms were to run consecutively;

3. At the hearing hereof the applicant was unrepresented whereas MsChemenjo appeared for the respondent; both parties made oral submissions; hereunder is a summary of their respective submissions;

APPLICANT'S SUBMISSIONS

4. By an undated application filed on the 02/05/20 the applicant applied for the revision of the sentences; she stated that she was remorseful and that she had rehabilitated and had also learnt a lot during her stay in prison; the trial court had not given her the option of a fine and she prayed for an order of revision on the running of the sentences that they run concurrently as opposed to consecutively.

RESPONDENTS SUBMISSIONS

5. In response the application was opposed on the grounds that there were multiple complaints involved; the respondent relied on the Court of Appeal Case No.66/2015 which held that a consecutive sentence was not illegal when the complaints were more than one; in this instance the sentence was legal;

ISSUES FOR DETERMINATION

6. After hearing the parties' submissions this court has framed only one issue for determination;

(i) Whether the trial court erred in meting out a consecutive term of imprisonment;

ANALYSIS

7. In this instance the primary facts established that there was overwhelming evidence that the applicant acting jointly and in concert with others knowingly conspired to sell properties by falsely representing themselves as the genuine owners and received monies from **PW1** with intent to defraud him in their quest to sell him "**air**"; the applicant was found guilty on Counts I, II and III and she was sentenced to a term of sixteen (16) months imprisonment on each count.

8. The provisions of Section 14 of the Criminal Procedure Code provide for the circumstances under which sentences may be consecutive or concurrent; the section reads as follows;

“Sentences in cases of conviction of several offences at one trial;-

(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.”

9. This court also makes reference to the Court of Appeal case of **Peter Mbugua Kabui vs Republic [2016] eKLR** which 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.”

10. The scope of this court's revisionary powers are that it can call for and examine the record of criminal proceedings of a subordinate court so as to satisfy itself as to the propriety and legality of the decision and that it has been made in accordance with the law; the applicable section for revision in this instance is found at Section 364 which reads as follows;

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a Court of Appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

11. Therefore, in the event this court finds or is satisfied that there was any impropriety or illegality in the sentencing and that it has not been made in accordance with the law then in such cases this court can alter or reverse the order;

12. In this instance even though the counts were on one Charge Sheet and one trial was conducted, there were three (3) distinct offences for which the applicant was charged; the criminal transactions were committed on three diverse dates and at different times, there were three (3) different properties involved and three different sums of monies that were paid out by **PW1** to the applicant; and upon conviction the trial court directed that the sentences run one after the expiration of the other;

13. The applicant has not demonstrated how the trial court erred in imposing the consecutive term of imprisonment or the illegality, impropriety or mistake that was committed when the sentence was meted out; the court record reflects that the trial court did not overlook any material factor when passing sentence and took into consideration the circumstances of the case and the mitigating factors; the trial court it is noted also took into consideration the fact that the applicant was a first time offender and that she was remorseful;

14. The sentence is as provided by the law and is found to be legal and lawful and that there is no reason found that justifies interference with the decision of the trial court;

15. It is noted that the applicant has not exhausted her avenues of appeal and she is at liberty to appeal against the severity of the sentence if she is of the opinion that it is manifestly harsh and excessive in the circumstances.

16. In the light of the forgoing this court is satisfied that this is not a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 of the Criminal Procedure Code; and the application is hereby dismissed.

FINDINGS AND DETERMINATION

17. For the foregoing reasons this court makes the following findings and determinations;

(i) This court finds that the trial court did not err in imposing the consecutive term of imprisonment; and finds no good reason that justifies interference with the decision of the trial court which is found to be legal and lawful;

(ii) The application is hereby dismissed; and the sentence imposed is hereby affirmed;

Orders accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 5th day of November, 2020.

HON. A. MSHILA

JUDGE